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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 222.

WILLIAM MOORE AND J. S. McFERREN, PARTNERS, DOING BUSINESS UNDER THE FIRM NAME OF MOORE & McFERREN, APPELLANTS,

vs.

R. J. McGUIRE, E. H. WOODS, E. S. WOODS, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED MARCH 14, 1906.

(20,127.)

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1 Be it remembered that on the second day of November, 1899, came into the Clerk's office of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, William Moore and J. S. McFerrin, partners doing business under the firm name of Moore and McFerrin by Myers and Banks and D. E. Myers, and Rose, Hemingway and Rose, Esqs., their solicitors, and filed in said Court on the Chancery side thereof their original bill of complaint against said R. J. McGuire, E. H. Woods, E. S. Woods, M. Y. Scott, M. M. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, C. L. Jones, Jr., and Hubert B. Wilson which bill of complaint is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Eastern District of Arkansas, Western Division.

WILLIAM MOORE and J. S. MCFERREN, Partners, Doing Business under the Firm Name of Moore & McFerren,

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Arkansas, in the Western Division thereof:

Your orators, William Moore and J. S. McFerrin, both citizens and residents of the State of Illinois, partners doing business under the firm name of Moore & McFerrin which firm has a large lumber business in Memphis, Tennessee, bring this, their bill, against the defendants R. J. McGuire, E. H. Woods, E. S. Woods, M. Y. Scott, M. M. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, Hubert B. Wilson and C. L. Jones, Jr., all of whom are residents of the State of Mississippi, with the exception of C L. Jones, Jr., and Hubert B. Wilson, who are either citizens and residents of the State of Arkansas or of the State of Mississippi, one or the other.

And thereupon your orators complain and say that the Complainants herein are the owners in fee and in possession of the following lands, lying and being in the County of Desha, and State of Arkansas, in the Western Division of the Eastern District of Arkansas, to-wit:—Southeast fractional quarter Section thirty-five, about 79 4/100 acres; North fractional half of Section thirty-six,

2 about 82 72/100 acres; east half of Southwest quarter of Section thirty-six, eighty acres; Southeast fractional quarter of Section thirty-six, about twenty-six and ninety-six-one hundredths acres; all in Township eleven South, Range one east of the fifth principal Meridian and also North-east fractional quarter of Section one, about seven and eighty-nine-one hundredths acres; Northwest fractional quarter of Section one, about one hundred and thirty-seven and thirty-eight-one hundredths acres; Southwest fractional quarter of Section one, about ten and fifty-six one hundredths

acres; North fractional half of Northeast fractional quarter, Section two, about sixty-five and fourteen one hundredths acres; Southeast fractional quarter and South half of Northeast quarter of Section two, one hundred and sixty and nine one hundredths acres.

All in Township twelve, Range one East, of the principal meridian, comprising what is know as Island 76 in the Mississippi River, and that said real estate and appurtenances is of value over Five Thousand Dollars.

Your orators would further represent unto your Honors that they are the owners in fee of said various desc-ibed tracts of land, including and embraced in Island 76, in the Mississippi River, and that they own the same by the following muniments of title, among others to be produced, to-wit:—

On or about June 23rd, 1847, the Southeast fractional half of Section thirty-five, Township eleven, Range one East, seventy-nine and four one hundredths acres was brought and entered at the Land office of the United States at Helena, Arkansas, by Joe Dempsey, then a citizen of the State of Arkansas, his certificate of purchase being # 5029.

That on June 23rd, 1847, the North fractional half of Section thirty-six, Township eleven South, Range one East, eighty-two and seventy-two one hundredths acres, was bought and entered at the United States Land office at Helena, Arkansas, by George S. Crane, by certificate of purchase # 5030, and said George S. Crane was then a citizen of the State of Arkansas.

That on July 27th, 1847, the East half of the Southwest quarter of Section thirty-six, Township eleven South, Range one East, eighty acres, was bought and entered at the United States Land office then in Helena, Arkansas, evidenced by certificate
3 # 671-C in favor of Oh-Us-Sis, who was then a resident and perhaps a citizen of the State of Arkansas.

That on July 17th, 1847, the Southeast fractional quarter of Section thirty-six, Township eleven, South, Range one East, twenty-six and ninety-six one hundredths acres was bought and entered at the United States Land Office at Helena Arkansas, by George Jefferies, evidenced by certificate # 5147.

That on July 17th, 1847, the Northeast fractional quarter of Section one, Township twelve, Range one East, seven and eighty-nine one hundredths acres was bought and entered at the United States Land Office at Helena, Arkansas by John R. Wilkinson, evidenced by certificate # 5143.

That on July 17th, 1847 by certificate # 5144, John R. Wilkinson bought and entered at the United States Land Office at Helena, Arkansas the Northwest fractional quarter of Section one, Township twelve South, Range one East, one hundred and thirty-seven and thirty-eight one hundredths acres.

That on July 17th, 1847, by certificate of purchase # 5145, John J. Lovin bought and entered at the United States Land Office at Helena, Arkansas, the Southwest fractional quarter of Section one, Township twelve South, Range one East, ten and fifty-six one hundredths acres.

That on July 17th, 1847, by certificate of purchase # 5146, John

J. Lovin bought and entered at the United States Land Office at Helena, Arkansas, the North fractional half of the Northeast quarter of Section two, Township twelve, Range one East, sixty-five and fourteen one-hundredths acres.

That on July 10th, 1847, by certificate of purchase # 5078 in the United States Land Office at Helena, Arkansas, John J. Lovin bought and entered the Southeast fractional quarter and South half of Northeast fractional quarter of Section two, Township twelve, Range one East, one hundred and sixty and nine one hundredths acres.

The foregoing and above entries and purchases from the United States Government constitute the whole of Island 76 in the Mississippi River, as your orators understand.

A duly certified copy and transcript of the records of the United States Land Office at Little Rock, Arkansas, showing the above entries and purchases, is herewith filed and marked "Exhibit A" and prayed to be taken as a part hereof.

4 Your orators further state and represent that the records of these sales made and formerly kept at Helena, Arkansas, were transferred to Little Rock, Arkansas, and are now in the land office there, as they are informed and believe and charge that each and every of said tracts were sold by the United States to the parties aforesaid at the dates aforesaid.

Your orators further represent in regard to a small portion of said Island 76, to-wit: the Southwest fractional quarter of Section two, containing about thirty-two and ninety-two one hundredths acres, being forfeited to the State of Arkansas for taxes, and also claimed under the Swamp Land Act of the United States Government, was on October 29th, 1890 sold and conveyed by the State of Arkansas to one John Evans, a citizen of the State of Arkansas, which is evidenced by a deed of Date October 29th, 1890, by the State of Arkansas, a copy of which is herewith filed and marked "Exhibit B" and made a part hereof, and the original will be produced on or before the hearing if required and is of record in Record Book A A, Page 134 in the Register's Office of Desha County, Arkansas.

Your orators would further represent that under a deed, dated October 10th, 1892, the said Joe Evans and his wife, Mary Evans, executed and delivered for a valuable consideration, to Mrs. Sallie H. Murphy, a deed to the last above described tract of land which deed is recorded in Record Book 11, Page 286 in the Register's Office of Desha County, Arkansas, a copy of which is herewith filed marked "Exhibit C" and the original will be produced on or before the hearing if required.

Your orators would further represent unto your Honors, that on August 12th, 1898, the Commissioners of Lands for the State of Arkansas by regular conveyance conveyed to Mrs. Sallie H. Murphy, the fractional Northeast quarter of Section thirty-five on Island 76 in Township eleven South of the base line, Range one East Fifth Principal meridian, containing fifteen and eight one hundredths acres, a copy of which deed is herewith filed marked Exhibit "D"

and made a part hereof, the original of which will be produced on or before the hearing if required, and subject to inspection.

Your orators would further represent that after the aforesaid lands were bought and entered from the United States Goverment as afresaid by the parties aforesaid, they were duly listed and as-
5 sessed for State, County and other taxes to the State of Arkansas and County of Desha, and that they were returned delinquent for said taxes for some years, and were declared forfeited to the State of Arkansas for said taxes so found to be delinquent and unpaid.

That afterwards the Legislature of Arkansas passed an Act entitled "An Act to enforce payment of overdue taxes," which act was approved March 12th, 1881. That under the provisions of said Act, a suit was brought and instituted in the Circuit Court of Desha County, on the Chancery side thereof by the State of Arkansas against various lands and parties; the object of said suit was to determine whether the forfeiture of said lands to the State of Arkansas was valid, and to ascertain the amount of taxes due on said lands to the State of Arkansas, and County of Desha, which was sought to be declared to be a lien upon said lands, and when the amount of said lien should be ascertained, if not paid by time certain to be fixed by said Court, that the said lands be offered for sale, and sold for overdue taxes.

Your orator would further represent that the lands hereinbefore described were embraced in that proceeding against various parties and lands for the foreclosure of tax liens under the Acts of the State of Arkansas as aforesaid.

Your oratoes further represent unto Your Honors that such proceedings were had in said suit and cause, that on October 11th, 1883, on one of the days of the Fall Term of said Court in 1883, a decree was rendered and entered of record in which was ascertained and fixed the amount of taxes due the State of Arkansas and County of Desha upon each of said tracts of land included in Island 76 as aforesaid, and ordering that said taxes so found to be due be paid on or before a certain date to be fixed, and in default thereof said lands were condemned to be sold, and J. S. Ross a citizen of the State of Arkansas, was duly appointed Special Commissioner for the purpose of exposing to sale said lands and selling the same.

That default was made in the payment of said taxes so found to be due by the Chancery Court on the said lands aforesaid, and said Special Commissioner having given due and legal notice by advertisement of said intended sale, in pursuance of said decree, did, on the 12th day of December, 1883, at the front door of the Court House in Arkansas City, Sta-e of Arkansas, and County of Desha,
6 offer said tracts of land for sale separately for the amount of said taxes, penalties and costs found to be due on each respective tract; and at the said sale the said Sallie H. Murphy, being the last and best bidder for each one of the said respective tracts aforesaid, the same were stricken off and sold to her for the amount of the tax, penalty and costs due under the provisions of said decree; and that she received a certificate of purchase therefor upon paying the amount of her said bid. And that the said Special Commis-

sioner Ross reported the sale he had made to the said Mrs. Sallie H. Murphy to said Court, (she being a resident of the State of Arkansas), and that said report of the said Special Commissioner, was in all things approved by the Court, and ordered to be at length spread upon the records of said Court, which was done.

Your orators would further represent unto Your Honors that the time for redeeming said lands from said sale having expired, and no part of the said lands having been redeemed by any one, the said Chancery Court did at its January Term, 1886, by an order duly entered and of record, direct said Special Commissioner Ross to execute, acknowledge and deliver to Mrs. Sallie H. Murphy a deed conveying to her the said lands and that said Special Commissioner did, in obedience to said order, on the last day of April, 1886, execute, acknowledge and deliver a deed to the said Mrs. Sallie H. Murphy, conveying all of said lands in fee to her.

Your orators would further represent that the said Special Commissioner did afterwards, to-wit, on Tuesday August 10th, 1887, it being one of the days of the July Term, 1887, of the Chancery Court of Desha County, Arkansas, appears in said Court and present to said Court for examination and approval, the deed so executed and acknowledged by him conveying all of the said lands to the said Mrs. Sallie H. Murphy, and the said Court did thereupon examine said deed, and finding the same in due form of law and properly executed and acknowledged in all things approved and confirmed said deed and ordered that its order approving and confirming the same be endorsed on said deed to the end that ir might be admitted to record; and thereupon said Special Commissioner delivered to Mrs. Sallie H. Murphy said deed which is now duly recorded in Book Six of Deeds, Pages 577-8-9 in the Recorder's Office of Desha County, Arkansas. A duly certified copy of said deed and
7 order is hereto attached and marked "Exhibit E" and prayed to be taken as a part hereof.

Your orators further show unto your Honors that on the 22nd day of August, 1898, Mrs. Sallie H. Murphy, then the owner of said property as aforesaid sold and delivered to your orators Moore and McFerrin the property hereinbefore described as Island 76 in the Mississippi River, by a general warranty deed for the sum of Twenty-eight Hundred Dollars and they allege that they have paid the whole of the purchase money on said island under said deed. A copy of said deed is herewith filed, and marked Exhibit "F" and made a part hereof, and will be produced now, if required, the original deed being subject to the inspection of the defendants at any time.

Your orators further represent and show unto your Honors that upon the receipt of the deed last aforesaid of August 22nd, 1898, from Mrs. Sallie H. Murphy, and even before that time, under a contract of sale, that they took possession of said Island 76, and about September or October, 1898, they took actual possession of the same by their agents and in person and commenced cutting timber thereon, and did during the fall and winter of 1898, cut a considerable amount of timber and shipped the same, having a regular camp on said island; and that they have continually from the

month of October, 1898 up to the present time had actual possession of said property, continuously cutting timber thereon and rafting the same, and the said rafts of timber have been all the time connected to said island or scattered in the woods on the same, and they having paid or obligated themselves to pay, timber men for cutting the same and carting it.

They further state that the vendor Mrs. Sallie H. Murphy was in constructive possession of said island at the time she bought it in 1883 up to the time she sold it to your orators in August 1898, and that your orators have been in actual possession of the same and are now in possession of the same by their agents ever since the date of the purchase from Mrs. Sallie H. Murphy in August, 1898, and have never relinquished their possession of same since August, 1898, until the present time, and they claim now to be in possession of the entire property and real estate of Island 76 as hereinabove described.

Your orators further charge and represent that said lands known as No. 76, are in the Mississippi River, lying in front of
8 a portion of Bolivar County, in the State of Mississippi and lying in front also of a portion of Desha County, Arkansas, and that said lands are of the value of more than Two Thousand Dollars exclusive of interest and costs.

Your orators further charge and represent, upon information and belief, that the aforesaid tracts of land, constituting Island 76, from the year 1847, have been taxed and represented by the State of Arkansas, and that the taxes on the same, under the various proceedings in the State of Arkansas, have been collected and paid to the State of Arkansas from the year 1847 down to the present time and up to this date, in various ways, the entire taxes on said property have been charged on said lands for the State of Arkansas, and have been paid from said year 1847 up to this time to the State of Arkansas and is within its limits; that the plaintiffs claim title under the laws of the State of Arkansas, and that the defendants claim title under the laws of the State of Mississippi.

Your orators further charge and represent that from the date of grants of the United States as aforesaid in 1847 down to the present time, the grantees heretofore named as having purchased from the United States of America in 1847, and their assigns, have continually from that time, as citizens of the State of Arkansas, paid the taxes on said island and property hereinbefore described in the manner hereinbefore stated, and that other parties have paid the same under regular tax proceedings, and bought the same under and
— pursuance of the tax laws of the State of Arkansas.

Your orators further represent unto your Honors that by an Act of Congress of the United States of America, approved on June 15th, 1836, the territory of Arkansas was admitted into the Union as an independent State, fixing its eastern boundary as the middle of the main channel of the Mississippi River, which was the same as fixed by Congress for the territory before it was admitted to the Union as a State.

Your orators further state and charge upon information, advice and belief, that in February, 1846, W. Pelham, Surveyor General

of the State of Arkansas, made a plat of said State, in which the tracts of land herein described as constituting Island 76 was platted as a part of the State of Arkansas, and as part of Townships eleven and twelve South, Range one East, and Sections thirty-five,
9 thirty-six and two, and that on December 23rd, 1846, said plat by the Surveyor General of the State of Arkansas was approved by the United States. All of which will appear from a copy of said plat, which will be filed herewith on or before the hearing if required, the original of the same not being in the possession of your orators.

Your orators would further represent and show unto your Honors, that since the year 1836, the date of the admission of the territory of Arkansas into the Union, and since the year 1846, the date of the plat of the State of Arkansas by W. Pelham, Surveyor General, said tract hereinbefore described as constituting Island 76 in the Mississippi River, has belonged to and constituted a part of the State of Arkansas, and a part of Desha County in said State.

Your orators would further represent unto your Honors that since the year- 1846 and 1847 said island has been treated as belonging to the State of Arkansas, and part of Desha County in said State, and has been since 1847, the date of the sale by the United States Government to the parties hereinbefore mentioned, *being* assessed for taxation, and the taxes thereon paid by the various owners, as a part of the State of Arkansas up to the present time. And your orators herein allege upon information and belief that said island is a part of the State of Arkansas, and is within the Western Division of the Eastern District of Arkansas, and within the jurisdiction of this Court.

Your orators would further state that, in order to put the Court in full possession of the facts connected with this litigation so far as they now have information and knowledge, say that in 1817 the territory of Mississippi was admitted into the Union, and in said *tract* of admission by the Congress of the United States they stated, " * * * to the Mississippi River; thence up the same to the beginning" thus fixing the Eastern bank of the Mississippi River as the Western Boundary of the State of Mississippi.

Your orators further represent upon advice and belief, that the Congress of the United States has never by any act, changed the Western Boundary of the State of Mississippi since said Act of admission in 1817, and the Western Boundary of said State is still the Eastern Bank of the Mississippi River, perhaps at low water mark.

Your orators further represent unto your Honors that after the admission of the Territory of Mississippi into the Union as
10 a State, that the Legislature of said State, by an Act passed February 24th, 1836, and subsequent Acts, established and fixed the boundary lines of the County of Bolivar, in the State of Mississippi as follows, to-wit:

"*Bolivar:* Beginning at the point where the line between Township twenty-four and twenty-five intersects the line between ranges two and three West, and running thence with said Range line to the point where the same intersects the line between Townships twenty-one and twenty-two, thence East with the said Township lines to

Tallahatchie River; thence down the Tallahatchie River and Yazoo River to the point where the old Choctaw boundary line intersects the Yazoo River; thence with said boundary line to the point where the line between Townships nineteen and twenty leaves the same; thence west with said Township line to the Mississippi River; thence up the Mississippi River to the point where the line between Township- twenty-four and twenty-five intersects the same, and thence with the said Township lines to the beginning, shall form a new County, and shall be called the County of Bolivar."

Your orators further represent unto your Honors, upon information and belief, that at the date of admission of the State of Arkansas into the Union in 1836, and that at the date of the survey of said State in 1846 by W. Pelham, Surveyor General of the State of Arkansas, the main channel of the Mississippi River was east of the property herein described as Island 76; and that said Island and property has all the time belonged to the territory and within the limits of the State of Arkansas and under its jurisdiction, and does belong to said State now. But they further state upon information, that during these periods the channel of the Mississippi River has changed, by cut-offs and otherwise, from one side of the island to another, but in so doing it has never changed the jurisdiction of said island from the State of Arkansas.

Your orators further represent unto your Honors that notwithstanding the foregoing facts, that on or about August 20th, 1899, they were first informed that the County of Bolivar and State of Mississippi had assumed to levy a tax upon the land comprising said Island 76, and that the Assessor of said Bolivar County, Mississippi, without right or authority of law, had assumed to assess said Island 76 in Bolivar County and place the assessment on the tax books of Bolivar County Mississippi, and that said lands were reported forfeited to the said State of Mississippi, and that
11 either the Auditor of Mississippi, or some officer of the said State of Mississippi, by some kind of instrument of writing, the character of which is unknown to your orators did, on or about the 10th day of August, 1899, attempt to convey to defendants, R. J. McGuire, E. H. Woods, M. Y. Scott, M. M. Scott, E. M. Scott, W. A. Yerger and W. H. Fitzgerald, residents and citizens of said Bolivar County, Mississippi, in various parcels, the lands hereinbefore described as constituting Island 76 in the Mississippi River aforesaid.

And that by virtue of said instruments of writing, whatever it may be, of Date August 10th, 1899, which they upon information and belief, aver to be some kind of a tax deed, the said defendants aforesaid are now claiming an interest and title to the lands hereinbefore described as constituting Island 76.

Your orators would further show unto your Honors that they are informed and believe that the State of Mississippi and County of Bolivar, never made any claims to said Island 76 until sometime in 1882 or later, after there had been some change in the channels of the Mississip-i River.

That sometime in 1892 or 1893 the State of Mississippi attempted to and did, sell Island 76 claiming the title under forfeiture for

taxes, to one J. T. Currie and M. A. Hall, but that, afterwards in 1893 or 1894, under the application of said purchasers through their attorneys to the Auditor or Attorney General of the State, or other proper official, the authority of the State of Mississippi, and its jurisdiction over the island was abandoned, and the State of Mississippi therein abandoned its claim to said island and conceded that it belonged to the State of Arkansas, and thereupon refunded the purchase money to the purchasers thereof, to-wit; Currie and Hall and this matter was entered of Record in the Auditor's office, or Land Office of the State of Mississippi.

But since this matter has arisen, your orators having never heard of this Mississippi claim until the latter part of August, 1899, long after they had bought said property, they say that they are not able to present the true record from the Land office, or the Auditor's office of the State of Mississippi hereinabove stated, because they say that since they first learned that the said State of Mississippi claimed said Island 76, a yellow fever epidemic has raged in
12 Jackson, the capital of the State of Mississippi, and that the officials of said State are absent, and your orators cannot get or procure copies of said records, but they will do so as soon as possible, and present same to this Honorable Court.

Your orators would further represent unto your Honors that notwithstanding the facts as hereinbefore stated, that early in the summer and fall of 1898 they bought said property *bona fide* and took possession of said Island, established a camp and foundations for houses and tents thereon, and cut a considerable amount of timber, cottonwood logs therefrom, and left a man in charge of said property with a raft anchored to said island, during the temporary absence of the main camp on the Arkansas River, with the expectation to return, and did return about August 12th, 1899, yet your orators state that the said defendants R. J. McGuire, E. W. Woods, E. S. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger and W. H. Fitzgerald, as they are informed and believe, placed the defendant C. J. Jones, Jr., on said Island and attempted to take possession of the same and oust your orators from the possession thereof, making various and sundry demands and threats unnecessary to mention here, but which will be shown in the proof.

Your orators further represent unto your Honors that during their occupancy and possession of said property, they cut various saw logs of cottonwood timber from said property, amounting to as they believe *to* about five hundred cottonwood logs on the river bank of said Island of the value of about Seven Hundred and Fifty Dollars, and three hundred and fifty cottonwood logs on raft in Mississippi River anchored to said Island 76, and of the value of about Five Hundred and Twenty-five Dollars and eight hundred cottonwood lo*n*gs on the bank of said Island and in the woods of said Island 76, to the value of about Eight Hundred Dollars, total value Two Thousand and Seventy-five Dollars ($2,075.00) all being within said Island.

Orators further state that said cottonwood logs are liable to deterioration in value and liable to be washed away and lost and irrepa-

rable damage done orators unless prompt action is taken and injunction granted promptly.

That the said defendants placed the defendant C. L. Jones, Jr., on said Island in the latter part of August, 1899, claiming to ho[illegible] possession, and by threats attempted to intimidate the agents
13 of your orators and force them to leave the island with all the above timber in possession.

Your orators would further state that they have paid for, or obligated themselves to pay for the cutting, rafting and hauling of said cottonwood logs on said Island, and that said defendants failing to intimidate or force the agents of your orators to leave said Island, did, on or about October 16th or 17th, 1899, fraudulently and wrongfully sue out some kind of process of replevin in the State of Mississippi, and attempt to replevin said logs from your orators' agents then in possession of same, and actually went through the formula of serving said writs of replevin, and they are informed that the officer attempted to execute said replevin from one of the Courts of Bolivar County, Mississippi, actually went through the formula of taking possession and turned the same over to the said defendants hereinbefore stated, who then placed the defendant, D. W. Wilson, in charge thereof, as far as it could be done, and that the defendants, through their agents, C. L. Jones, Jr., and D. W. Wilson now claim to be in possession of the same, it having been turned over to them by the Sheriff, or some other officer, of Bolivar County, Mississippi, said logs still *belong* on said Island.

Your orators further allege that said proceedings in Bolivar County Mississippi, is absolutely void for want of jurisdiction of the subject matter, said Island 76, and the property thereon — situated in the County of Desha and State of Arkansas.

Your orators further represent and show, upon information, that afterwards, to-wit: on or about the 23rd day of October, 1899, the said defendants, with the exception of C. L. Jones, Jr., and D. W. Wilson, brought an action of forcible entry and detainer before some magistrate of Bolivar County, Mississippi to obtain possession of said Island 76.

And your orators further represent unto your Honors and charge that said action of forcible entry and detainer is without authority of law, the said magistrate having no jurisdiction whatever over the said island, and which is merely a possessory action, and being local in its nature, your orators filed their petition and had the cause removed, on October 28th, 1899, to the Circuit Court of the United States for the Southern District of Mississippi, at Vicksburg. They charge that said action is totally without authority of law or
14 jurisdiction of said magistrates, but was intended by a combination and fraud to get some kind of a writ of possession of said Island 76 against your orators.

All these matters are stated so as to place the Court in possession of all the facts so far as your orators know.

Your orators further represent unto your Honors that since the foregoing part of this bill was dedicated and written, they learn that said defendants have instituted some other suit, or proceeding, in Bolivar County, Mississippi, either before a Justice of the Peace or

the Circuit Court, they do not know which, to recover possession of the timber and property on said Island 76, the character of which proceedings is unknown to your orators at this time, but this fact is stated to show the intention on the part of the defendants to further harass and annoy your orators with a multiplicity of suits in the Courts of Bolivar County Mississippi, which your orators claim has no jurisdiction in this matter. They further state that unless defendants be promptly enjoined, orators are liable to a multiplicity of suits and delays and irreparable damages.

Your orators further represent unto your Honors that in addition to the foregoing that the State of Mississippi claims to have attained title to said Island by what is known as the "Swamp Land Act" passed by the Congress of the United States, and approved about September 24th, 1852.

And that the State of Arkansas claims to have derived title to said Island under an Act of Congress of the United States known as the "Swamp Land Act" approved September 28th, 1850.

Notwithstanding the fact that before the passage of the Swamp Land Acts to-wit, in 1847, the United States Government had sold said Island and the property hereinbefore described to private individuals and citizens of the State of Arkansas.

So your orators would further show unto your Honors that they are claiming title to said Island under title derived from the United States Government under the sale of 1847, and also the State of Arkansas under the "Swamp Land Acts" of 1850, as aforesaid, and that the defendants are claiming title to said Island through a grant of the State of Mississippi under the Swamp Land Acts of 1852, as they are now advised and believe, thus placing the jurisdiction of this controversy in the Circuit Court of the United States.

Your orators would further represent and show unto Your Honors, that they are without adequate remedy at law in this matter, and are advised that a Court of Equity can only give them adequate relief.

They are further advised that the title claimed by the defendants under and through the tax laws of the State of Mississippi, is illegal and void, but however is a cloud upon their title to Island 76 and the property hereinbefore described, and that they are entitled in a Court of Equity to have said cloud removed and the title thereto quieted.

They further state that they are advised that they are entitled to have defendants, their agents and attorneys enjoined from further proceedings in the State Courts of Mississippi, or from bringing any further suits to harass your orators in regard to the property hereinbefore described, in order that the whole may be settled in a proper tribunal, the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

Your orators further represent unto your Honors that of the said personal property hereinbefore described, to-wit: the raft in the Mississippi River of about two hundred and fifty cottonwood logs, that it is liable to break loose or sink and be lost or destroyed, and that the cottonwood logs on the banks and in the woods are liable to deteriorate by the action of worms, or an overflow may float the

[illegible] property is liable to depreciate and be lost unless attended to and disposed of at once, and that in this connection they deem it necessary and important that a Receiver be appointed by this Honorable Court to take charge of said property, rafts and logs now cut on said Island 76 and sell and dispose of the same for the best prices he can, for the best interests of the parties concerned. And they allege that great damage is liable to occur unless a receiver is appointed soon for the said land and logs with full power to take charge of and dispose of the same.

Premises considered your orators pray for process of subpœna against all of the defendants herein named, to-wit: R. J. McGuire, E. H. Woods, E. S. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, C. L. Jones, Jr., and D. W. Wilson and that as against the non-residents such orders may be made by this Court as under the practice is necessary to give said non-residents proper notice.

That a warning order may be issued against the said non-residents requiring each and every one of them to appear, plead, answer or demur to this bill, and that all such orders may be made herein as are necessary to have process served on said non-residents at
16 their places of residence, as may be necessary and meet under the rules of practice of this Court. And that said defendants, each and every one of them, be required under proper process and orders of this Court as aforesaid to appear in this Court, and specifically set up and answer what title or claim they have to the real estate and property described in the bill herein, or any part thereof, and that they be required to exhibit their evidences or muniments of title to said property, if they have any, an oath to said answer being hereby waived.

II.

Your orators further pray that a writ of injunction be granted by this Honorable Court herein restraining the said defendants, to-wit: R. J. McGuire, E. H. Woods, E. S. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, C. L. Jones, Jr., and D. W. Wilson, their agents representatives and attorneys, from further interfering with or attempting to interfere with the possession of your orators in and to the property known as Island 76, hereinbefore described, or the timber or logs thereon cut, or the raft attached thereto.

That the defendants aforesaid to-wit: R. J. McGuire, E. H. Woods, E. S. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, C. L. Jones, Jr. and D. W. Wilson be restrained and inhibited from bringing or prosecuting any further suits in the Court of Bolivar County, Mississippi or any Court of the State of Mississippi, or prosecuting any suits they have already brought against your orators, either for the possession of said Island 76 or for the possession of any timber or logs cut thereon by your orators, or for any raft or logs now anchored in the Mississippi River to said Island, which logs have been cut therefrom, and that the said defendants be required to bring all these matters and ques-

unto this Court a full and final adjudication and determination in order that the rights of all parties may be settled and determined.

III.

Your orators further pray that upon final hearing of this cause that they may be decreed to have an absolute title to said Island 76 and property hereinbefore described and that whatever claim or title said defendants to wit: R. J. McGuire, E. H. Woods, E. S. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, C. L. Jones, Jr. and D. W. Wilson may have or set up herein to said property may be removed and cancelled as a cloud
17 upon your orators' title herein, and the whole matter determined and the title of your orators be confirmed and quieted.

IV.

Your orators further pray for all such other relief, and further relief as in equity they may be entitled to, both generally and special and they pray for general relief.

MOORE AND McFERRIN,
By MYERS AND BANKS,
D. E. MYERS,
ROSE, HEMINGWAY AND ROSE.

Endorsed: Filed November 2nd, 1899. W. P. Feild, Clerk.

18 Exhibit "A" to the Bill of Complaint was not furnished but in lieu a transcript of the Record of the various entries and sales by the United States Government to the various parties and to the various tracts of land on Island 76, the land in controversy, each conveyance being properly certified by Binger Herman, Commissioner General Land Office, United States, and filed herewith as Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 to bill as evidence of title.

19 EXHIBIT "1."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th*, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of Josephine Dempsey founded on Helena, Arkansas, Cash Entry No. 5029 Preemption is a true and literal exemplification from the record in this Office.

In testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

Pre-emption Certificate No. 5029.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas Josephine Dempsey, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that Full Payment has been made by the said Josephine Dempsey, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the South East fractional quarter of fractional Section Thirty-five, and the West half of the South West quarter of fractional Section Thirty-six, in Township Eleven South, of Range One East, in the District of Lands subject to sale at Helena, Arkansas, containing one hundred and fifty-nine acres, and four hundredths of an acre, according to the Official Plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tracts have been purchased by the said Josephine Dempsey.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Josephine Dempsey and to her heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Josephine Dempsey and to her heirs and assigns forever.

In testimony whereof, I, James K. Polk, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of November, in the year of our Lord one thousand eight hundred and forty-eight, and of the Independence of the United States the seventy-third.

By the President:

JAMES K. POLK,
By J. K. STEPHENS, *Ass't Sec'y.*
S. H. LAUGHLIN,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 306.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

21

EXHIBIT "2."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *February 18th*, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of George S. Crane founded on Helena, Arkansas, Cash Entry No. 5030 Pre-emption is a true and literal exemplification from the record of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

Pre-emption Certificate No. 5030.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas George S. Crane, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that full payment has been made by the said George S. Crane, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the North fractional half (on Island) of fractional Section Thirty-six, in Township Eleven South, of Range One East, in the District of Lands subject to sale at Helena, Arkansas, containing eighty two acres, and eighty-eight hundredths of an acre, according to the official plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said George S. Crane.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and
22 by these presents do give and grant, unto the said George S. Crane and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said George S. Crane and to his heirs and assigns forever.

In testimony whereof I, James K. Polk, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the First day of November, in the year of our Lord one thousand eight hundred

and forty-eight, and of the Independence of the United
[L. S.] States the seventy-third.
By the President:

JAMES K. POLK,
By J. K. STEPHENS, *Ass't Sec'y.*
S. H. LAUGHLIN,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 307.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

23 EXHIBIT "3."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *February 18th*, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of George S. Crane founded on Helena, Arkansas, Choctaw Certificate No. 671C is a true and literal exemplification from the record of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

24 *Choctaw Certificate No.* 671C.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas George S. Crane assignee of Ah-no-si has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, Arkansas, whereby it appears that Choctaw Certificate No. 671C, in the name of Ah-no-si, for eighty acres of land (issued by the Secretary of War in pursuance of the provisions of the Act of Congress of the 23d of August, 1842, entitled "An act to provide for the satisfaction of claims arising under the fourteenth and nineteenth Articles of the Treaty of Dancing Rabbit Creek, concluded in September, one thousand eight hundred and thirty:" of the act of Congress of the 3d of March, 1845, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes, for the fiscal year commencing on the 1st day of July, 1845, and ending on the 30th day of June, 1846," and of the Joint Resolution of Congress of the 3d of August,

1846, entitled "Joint Resolution to authorize the Secretary of War to adjudicate the claims of the Su-quak-natch-ah and other clans of Choctaw Indians, whose cases were left undetermined by the Commissioners for want of the township maps,") has been surrendered by the said George S. Crane in full satisfaction for the East half of the South West quarter of Section thirty six in Township eleven. South of Range one East (on Island) in the District of Lands subject to sale at Helena, Arkansas, containing eighty acres according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been located by the said George S. Crane.

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said George S. Crane and to his heirs, the said tract above described: To have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging, unto the said George S. Crane and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these Letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the first day [L. S.] of August, in the year of our Lord one thousand eight hundred and forty nine, and of the Independence of the United States the seventy fourth.

By the President:

Z. TAYLOR,
By THOS. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Vol. 268, page 23, Arkansas.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

EXHIBIT "4."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of George Jefferies founded on Helena, Arkansas, Cash Entry No. 5147 is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name, and

caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
Commissioner of General Land Office.

Certificate No. 5147.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas George Jefferies, of Phillips County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that Full Payment has been made by the said George Jeffries, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the South East fractional quarter (on Island) of fractional Section thirty-six, in Township Eleven South, of Range One East, in the District of Lands, containing twenty-six acres, and ninety six hundredths of an acre, according to the Official Plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said George Jefferies.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said George
27 Jefferies and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said George Jefferies and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of December, in the year of our Lord one thousand eight hundred and forty-nine, and of the Independence of the United States the seventy-fourth.

By the President:

Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, page 440.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

28 EXHIBIT "5."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of John R. Wilkinson founded on Helena, Arkansas, Cash Entry No. 5143 is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
Commissioner of General Land Office.

Certificate No. 5143.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas John R. Wilkinson, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that Full Payment has been made by the said John R. Wilkinson, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the North East fractional quarter (on Island) of fractional Section one, in Township twelve South, of Range one East, in the District of Lands subject to sale at Helena, Arkansas, containing seven acres, and eighty-nine hundredths of an acre, according to the Official Plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said John R. Wilkinson.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted,
29 and by these presents do give and grant, unto the said John R. Wilkinson and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said John R. Wilkinson and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of

December, in the year of our Lord one thousand eight hun-
[L. S.] dred and forty-nine, and of the Independence of the United States the seventy-fourth.

By the President:

Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, page 436.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

30 EXHIBIT "6."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *February 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of John R. Wilkinson founded on Helena, Arkansas, Cash Entry No. 5144 is a true and literal exemplification from the record of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

31 *Certificate No.* 5144.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas John R. Wilkinson, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that full payment has been made by the said John R. Wilkinson, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provisions for the sale of the Public Lands," for the North West fractional quarter (on Island) of Section one, in Township twelve, South, of Range one East in the District of Lands subject to sale at Helena, Arkansas, containing one hundred and thirty-seven acres, and thirty-eight hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor Genera', which said Tract has been purchased by the said John R. Wilkinson.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress

in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John R. Wilkinson and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said John R. Wilkinson and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

[SEAL.] Given under my hand, at the City of Washington, the first day of December, in the year of our Lord one thou-
32 sand eight hundred and forty-nine, and of the Independence of the United States the seventy-fourth.

By the President:

Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 437.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

33 EXHIBIT "7."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of John J. Lovin founded on Helena, Arkansas, Cash Entry No. 5145 is a true and literal exemplification from the record in this Office.

In testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

Certificate No. 5145.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas John J. Lovin, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that full payment has been made by the said John J. Lovin, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled

"An Act making further provision for the sale of the Public Lands," for the South West fractional quarter (on Island) of fractional Section one, in Township twelve South, of Range one East, in the District of Lands subject to sale at Helena, Arkansas, containing ten acres, and fifty-six hundredths of an acre, according to the official plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said John J. Lovin.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of
34 Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John J. Lovin and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said John J. Lovin and to his heirs and assigns forever.

In testimony whereof, I, Zachary Taylor, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of December, in the year of our Lord one thousand eight hundred and forty-nine, and of the Independence of the United States the seventy-fourth.

By the President:

[L. S.] Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SRAGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 438.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

35 EXHIBIT "8."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of John J. Lovin founded on Helena, Arkansas, Cash Entry No. 5146 is a true and literal exemplification from the record of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

Certificate No. 5146.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas, John J. Lovin, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that full payment has been made by the said John J. Lovin, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the North fractional half of the North East fractional quarter (on Island) of fractional Section two, in Township twelve, South, of Range one East, in the District of Lands subject to sale at Helena, Arkansas, containing sixty-five acres and fourteen hundredths of an acre, according to the official plat of the Survey of said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said John J. Lovin.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John J. Lovin
36 and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said John J. Lovin and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these letters to be made Patent. and the Seal of the General Land Office to be hereunto affixed.

By the President:

[L. S.]

Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 439.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

37 EXHIBIT "9."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of John J. Lovin founded on Helena, Arkansas, Cash Entry No. 5078 Pre-

emption is a true and literal exemplification from the record of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

38 *Pre-emption Certificate No. 5078.*

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas, John J. Lovin, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that full payment has been made by the said John J. Lovin, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the South East fractional quarter and South half of the North East quarter of fractional section two, in Township twelve, South, of Range one, East, (on Island) in the District of Lands subject to sale at Helena, Arkansas, containing one hundred and sixty acres, and nine hundredths of an acre, according to the official plat of the Survey of said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said John J. Lovin.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John J. Lovin and to his heirs, the said Tract above described; to have and to hold the same, together with all rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said John J. Lovin and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, on the
[L. S.] first day of December, in the year of our Lord one thousand eight hundred and forty-nine, and of the Independence of the United States the seventy-fourth.

39 By the President:

Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 379.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

40 EXHIBIT "10."

M. L. 124,035. E. M.

DEPARTMENT OF THE INTERIOR,
K. GENERAL LAND OFFICE,
R. C. L. WASHINGTON, D. C., *February 18th*, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed paper, being a copy of Arkansas Swamp Land Patent No. 11, Helena series, issued April 20, 1859, is, in so far as it relates to the N. E. frl. ¼ Sec. 35 T. 11 S, R 1 E., and the S. W. frl. ¼ Sec. 2, T. 12 S, R. 1 E., a true and literal exemplification of the record of the original patent in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
Commissioner of the General Land Office.

No. 11.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the 'Swamp Lands' within their limits," it is provided that all the "Swamp and Overflowed Lands," made unfit thereby for cultivation, within the State of Arkansas which remained unsold at the passage of said act, shall be granted to said State:

And whereas, In pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "Swamp and Overflowed Lands," inuring to the said State under the act aforesaid, being situated in the District of Lands subject to sale at Helena, Arkansas, to-wit:

* * * * * * *

Township 11 South of Range 1 East.

41 The southwest fractional quarter on Island of Section two, containing thirty-five acres and ninety-two hundredths of an acre.

* * * * * * *

* * * according to the official plat of survey of the said lands to the General Land Office by the Surveyor General and for which the Governor of the said State of Arkansas, did on the fifteenth day of June, one thousand eight hundred and fifty-eight request a patent to be issued to the said State as required in the aforesaid act.

Now therefore know ye that the United States of America, in consideration of the premises and in conformity with the act of Con-

gress aforesaid, have given and granted and by these presents do give and grant unto the said State of Arkansas, in fee simple, subject to the disposal of the Legislature thereof, the tracts of land above described. To have and to hold the same, together with all the rights, privileged, immunities and appurtenances thereto belonging, unto the said State of Arkansas, in fee simple and to its assigns forever.

In testimony whereof I, James Buchannan, President of the United States of America, have caused these letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the twentieth day of April in the year of Our Lord one thousand eight hundred and fifty-nine and of the Independence of the United States the eighty-third.

By the President:

JAMES BUCHANNAN,
By T. J. ALBRIGHT, *Secretary.*
J. N. GRANGER,
Recorder of the General Land Office.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

42 EXHIBIT "B" TO BILL.

THE STATE OF ARKANSAS:

To all to whom these presents shall come, Greeting:

Know ye, that whereas, by an Act of Congress of the United States of America, entitled "An Act to enable the State of Arkansas and other States to reclaim the swamp and overflowed lands within their limits," approved 28th of September, 1850. And whereas under the provisions of the Acts of the General Assembly of the State of Arkansas, regulating the price and sale of lands so granted, the Treasurer of the State of Arkansas, did grant his receipt dated the 29th day of October and numbered 165 to, and in favor of Joe Evans for the following described lands, to-wit: the Southwest fractional quarter on Island of Section two (2) in Township Twelve South of the base line in Range One (1) East of the Fifth Principal Meridian. containing thirty-five and 92/100 acres and said lands having been patented by the United States to the State of Arkansas, as a portion of the Swamp and Overflowed Lands granted to said State by the Act of Congress aforesaid, and the purchase money for said lands amounting to Forty-four (44) Dollars and Ninety (90) Cents having been fully paid; therefore the said Joe Evans is entitled to a deed from the State of Arkansas for said land.

Now therefore I C. B. Myers Commissioner of State Lands for the State of Arkansas, for and in behalf of said State, and in consideration of the premises, have granted, bargained, sold, confirmed and conveyed, and by these presents do grant, bargain, sell, confirm and convey to the said Joe Evans and to his heirs and assigns, the tracts of land hereinbefore designated.

To have and to hold the said tracts or parcels of land hereinbefore described, with the appurtenances thereunto belonging to the said Joe Evans and to his heirs and assigns forever.

In testimony whereof I C. B. Myers Commissioner of State Lands for the State of Arkansas have hereunto set my hand and caused the seal of my said office to be affixed, at the City of Little Rock,
43 on this 29th day of October 1890, and of the Independence of the United States of America the one hundred and fifteenth year.

(Signed) C. B. MYERS,
[SEAL.] *Commisioner of State Lands for the State of Arkansas.*

STATE OF ARKANSAS, *County of Desha:*

I, Howard Robb, Clerk of the Circuit Court and Ex-Officio Recorder, within and for said County and State do certify that the annexed instrument of writing was filed for record in my office on the 15th day of August, 1898, at four o'clock P. M. and that the same is now duly recorded with the acknowledgement and certificate thereto in State Deeds Record Book "AA" on page one hundred and thirty-four.

In testimeny whereof I have hereunto set my hand and official seal this 15th day of August, 1898.

[SEAL.] (Signed) HOWARD ROBB, *Clerk.*

Endorsed: Filed for Record August 15th, 1898. Howard Robb, Clerk. Filed December 15th, 1905. W. P. Feild, Clerk.

44 EXHIBIT "C" TO BILL.

For and in consideration of the sum of One Hundred Dollars cash in hand the receipt of which is hereby acknowledged, We Joseph Evans and Mary E. Evans, his wife, of Yell County in the State of Arkansas have granted, bargained and sold and by these presents do grant bargain and sell unto Mrs. Sallie H. Murphy, wife of James Murphy, the following tract of land to-wit: Southwest fractional quarter on Island of Section two (2), in Township No. twelve (12), South of Range No. one (1) East in Desha County, Arkansas with all the accretions thereto with all and singular the appurtenances thereunto belonging. To have and to hold to said Sallie H. Murphy, her heirs and assigns in fee simple forever.

And I Mrs. Mary E. Evans, wife of said Joseph Evans for the consideration aforesaid do hereby freely and fully relinquish and release unto said Mrs. Sallie H. Murphy, her heirs and assigns all my right, claim and possibility of dower into and out of said aforegranted premises.

It is distinctly undersood and agreed that the title hereby conveyed is only the title acquired by said Joseph Evans by deed of Commissioner of State Lands for the State of Arkansas, dated 29th October, 1890.

Witness our hands and seals this 10th day of October, 1892.
(Signed) JOSEPH EVANS. [SEAL.]
MARY E. EVANS. [SEAL.]

STATE OF ARKANSAS, *County of Yell:*

Be it known that on this 10th day of October, 1892, at the County and State aforesaid personally appeared before the undersigned, an acting duly commissioned and qualified Notary Public in and for said County, the above mentioned Joseph Evans, to me personally well known and stated that he had executed the above and foregoing deed for the uses, purposes and consideration therein mentioned and set forth.

And on the same day also personally appeared before me the above mentioned Mrs. Mary E. Evans, wife of said Joseph Evans to me personally well known as one of the grantors in the above and foregoing deed of conveyance and in the absence of her said husband acknowledged that she had signed and sealed the relinquishment of dower therein expressed for the purposes therein contained and set forth without compulsion or undue influence of her husband.

Given under my hand and Notarial seal this 10th day of October, 1892.

[SEAL.] (Signed) GEORGE A. HARMON,
Notary Public.

My Commission expires January 23rd, 1903.

STATE OF ARKANSAS, *County of Desha:*

I, Howard Robb, Clerk of the Circuit Court and *Ex-Officio* Recorder, within and for said County and State do certify that the annexed instrument of writing was filed for record in my office on the 15th day of August, 1898, at four o'clock P. M. and the same is now duly recorded with the acknowledgment and certificate thereto in Real Estate Record Book 11 on page 286.

In testimony whereof I have hereunto set my hand and official seal this 15th day of August, 1898.

[SEAL.] (Signed) HOWARD ROBB, *Clerk.*

Endorsed: Filed for record August 15th, 1898. Howard Robb, Clerk. Filed December 15th, 1905. W. P. Feild, Clerk.

EXHIBIT "D" TO BILL.

The State of Arkansas to all to whom these presents shall come, Greeting:

Know ye, that whereas, by an Act of Congress of the United States of America, entitled "An Act to enable the State of Arkansas and other States to reclaim the swamp and overflowed lands within their limits," approved 28th of September, 1850. And whereas under the provisions of the Acts of the General Assembly of the State

of Arkansas, regulating the price and sale of lands so granted, the Treasurer of the State of Arkansas, did grant his receipt dated the 12th day of August, 1898 and numbered 21 to, and in favor of Sallie H. Murphy for the following described lands, to-wit:

Fractional Northeast quarter of Section thirty five (35) on Island in Township Eleven South of the base line in Range One (1) East of the Fifth Principal Meridian, containing Fifteen and eight hundredths acres and said lands having been patented by the United States to the State of Arkansas, as a portion of the Swamp and Overflowed Lands granted to said State by the Act of Congress aforesaid, and the purchase money for said lands amounting to Eighteen Dollars (18) and eighty-five (85) Cents having been fully paid; therefore the said Sallie H. Murphy is entitled to a deed from the State of Arkansas for said land.

Now therefore I J. F. Ritchie Commissioner of State Lands for the State of Arkansas, for and in behalf of said State, and in consideration of the premises, have granted, bargained, sold, confirmed and conveyed, and by these presents do grant, bargain, sell, confirm and convey to the said Sallie H. Murphy and to her heirs and assigns, the tracts of land hereinbefore designated.

To have and to hold the said tracts or parcels of land hereinbefore described, with the appurtenances thereunto belonging to the said Sallie H. Murphy and to her heirs and assigns forever.

In testimony whereof I J. F. Ritchie Commissioner of State Lands for the State of Arkansas have hereunto set my hand and caused the seal of my said office to be affixed, at the City of Little Rock, on this 12th day of August 1898, and of the Independ-
47 ence of the United States of America the one hundred and twenty-third year.

[SEAL.] (Signed) J. F. RITCHIE,
Commissioner of State Lands for the State of Arkansas.

STATE OF ARKANSAS, *County of Desha:*

I, Howard Robb, Clerk of the Circuit Court and *Ex-Officio* Recorder, within and for said County and State do certify that the annexed instrument of writing was filed for record in my office on the 15th day of August, 1898, at four o'clock P. M. and that the same is now duly recorded with the acknowledgement and certificate thereto in State Deeds Record Book "A A" on page one hundred and thirty-four.

In testimony whereof I have hereunto set my hand and official seal this 15th day of August, 1898.

[SEAL.] (Signed) HOWARD ROBB, *Clerk.*

Endorsed: Filed for Record August 15th, 1898. Howard Robb, Clerk. Filed December 15th, 1905. W. P. Feild, Clerk.

48 EXHIBIT "E" TO BILL.

Know all men by these presents that whereas a decree was rendered in the Circuit Court of Desha County, Arkansas in Chancery sitting on the 11th day of October, A. D. 1883, in a certain cause therein pending wherein the State of Arkansas on relation of Desha County was plaintiff and certain lands on which taxes are alleged to be due and the State Auditor are defendants, condemning to be sold for non-payment of taxes the following tracts of land lying in said Desha County, viz:—

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Taxes.	Penalty and costs.
Fractional N. E. ¼	35	11 S.	1 E.	15	08	....	$5.18
Fractional S. E. ¼	35	11 S.	1 E.	79	14	....	8.00
Fractional N. W. ¼	36	11 S.	1 E.	82	52	....	17.00
Fractional S. E. ¼	36	11 S.	1 E.	26	96	...	5.40
East ½ S. W. ¼	36	11 S.	1 E.	80	....	....	15.00
West ½ S. W. ¼	36	11 S.	1 E.	80	....	....	8.00
Fractional section	1	12 S.	1 E.	147	38	....	11.52
Fractional section	2	12 S.	1 E.	261	10	....	18.44
Total	....	....	...	.	...	....	$88.54

And whereas said lands were on the 12th day of December, A. D. 1883, sold to Mrs. Sallie H. Murphy for the respective sum of money hereinbefore set opposite each tract aggregating the sum of Eighty-eight Dollars and fifty-four cents ($88.54), which said sum of money was thereupon paid by said Mrs. Sallie H. Murphy to me as Commissioner of said Court as required by law, each of said tracts having been separately offered for sale and each separately sold for the taxes penalty and costs assessed against it. And the sum so paid being the aggregate amount bid for all of said lands the said Mrs. Sallie H. Murphy having been the best bidder for each of said tracts, and no one offering to bid the amount of taxes penalty and costs assessed against said several tracts for a less quantity than the whole of each tract the same were separately stricken off to her,

49 which sale was duly reported by me to said Court and by said Court was approved and confirmed and my said report ordered to be recorded. And whereas the time allowed by law for redemption has expired and I, J. S. Ross, as Commissioner appointed by said Court am directed by said Court by an order made and entered of record at its January Term A. D. 1886 to execute a deed of conveyance conveying said land to said Mrs. Sallie H. Murphy.

Now therefore in consideration of said sum of money and of the premises aforesaid, I, as such Commissioner, do hereby grant, sell

and convey unto the said Mrs. Sallie H. Murphy, her heirs and assigns, the several tracts or parcels of land all and singular hereinbefore described.

Witness my hand as such Commissioner on this 1st day of April, 1886.

(Signed) J. S. ROSS,
Commissioner of Circuit Court, in Chancery, Desha County, Arkansas.

STA-E OF ARKANSAS, *Desha County, ss:*

Be it remembered that on this 1st day of April, A. D. 1886 at the County and State aforesaid personally appeared before me the undersigned an acting, duly commissioned and qualified Notary Public in and for said County, J. S. Ross, to me personally well known to be the grantor in the above and foregoing deed of conveyance and acknowledged that he as Commissioner of the Desha Circuit Court in Chancery sitting had executed and delivered the above and foregoing deed of conveyance for the uses, purpose and consideration therein mentioned and expressed and desired the same certified, which is accordingly done.

Given under my hand and notarial seal at the County and State aforesaid this 1st day of April, 1886.

(Signed) HENRY THANE,
[SEAL.] *Notary Public, Desha County, Arkansas.*

Endorsed: This deed is approved in open Court this August 9th, 1886. Jno. A. Williams, Judge.

STATE OF ARKANSAS, *County of Desha:*

Be it remembered that at a Term of the Circuit Court be-
50 gun and holden in and for the County of Desha at the Court House thereof in Arkansas City on Monday the 26th day of July 1886 it being the time and place fixed by law for the holding of the July Term, 1886 of said Court, present and presiding the Honorable John A. Williams, Judge of the Eleventh Judicial Circuit and J. P. Jones, Clerk of said Court and M. W. Quilling, Sheriff of Desha County being also present, Court was proclaimed in due form of law by said Sheriff and the following among other proceedings were had on the Chancery side thereof, to-wit:

And Tuesday, August 10th, 1897, being a day of said Term, Court met pursuant to adjournment. Presiding and present as of Monday July 26th, 1887, when Court was proclaimed in due form of law, and the following, among other, proceedings were had on the Chancery side thereof, to-wit:

373.

STATE OF ARKANSAS on Relation of DESHA COUNTY
vs.
CERTAIN LANDS ON WHICH TAXES ARE ALLEGED TO BE DUE.

On this day was presented to the Court for its examination and approval the deed of J. S. Ross, the Commissioner of this Court, who was directed to convey to Mrs. Sallie H. Murphy the following lands to-wit: All of fractional Section thirty-five, Township eleven South, Range one East; all of fractional Section thirty-six, Township eleven South, Range one East; all of fractional Section one, Township twelve South, Range one East; all of fractional Section two, Township twelve South, Range one East.

And on examination of said deed by the Court, it appearing to the satisfaction of the Court that the said deed is in due form of law and is properly executed and acknowledged and that it should be approved by the Court as a good and sufficient deed.

It is therefore ordered, adjudged and decreed by the Court that the said deed of the said J. S. Ross, as such Commissioner conveying to the said Mrs. Sallie H. Murphy the said lands above described be and the same is in all things approved and confirmed and that the order of approval be endorsed on said deed and recorded with it.

STATE OF ARKANSAS, *County of Desha:*

51 I, Henry Thane, Clerk of the Circuit Court and *Ex-Officio* Recorder within and for the said county of Desha and State aforesaid do hereby certify that the annexed instrument of writing was filed in my office for record on the 28th day of February, A. D. 1887, and that the same is now duly recorded in Record book six pages 577, 588, 589.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 1st day of March 1887.

[SEAL] H. THANE, *Clerk,*
By ED. C. WILLIAMS, *D. C.*

STATE OF ARKANSAS, *County of Desha:*

I, Henry Thane, Clerk of the Circuit Court in and for said County do hereby certify that the above and foregoing pages numbered one and two inclusive, contain a full, true, complete and compared copy of the matters therein set forth as the same appears of record in Chancery Record Book "C" on page 51 in my office.

In testimony whereof, I have hereunto set my hand as such Clerk and affixed the seal of my office at Arkansas City, Arkansas, this 28th day of February, 1887.

[SEAL.] (Signed) H. THANE, *Clerk,*
By ED. C. WILLIAMS, *D. C.*

Endorsed: Filed for record February 28th, 1887. H. Thane, Clerk, by Ed. C. Williams, D. C. Filed December 15th, 1905. W. P. Feild, Clerk.

52 EXHIBIT "F" TO BILL.

Warranty Deed.

Unmarried Person.

Know all men by these presents: That I Sallie H. Murphy for an-
in consideration of the sum of Two Thousand Eight Hundred Dollars paid and to be paid by Moore and McFerrin of Memphis Tennessee as follows, to-wit: One Thousand Four Hundred Dollars cash in hand, (the receipt of which is hereby acknowledged) and One Thousand Four Hundred Dollars on or before six months after date, evidenced by note of even date herewith for the said one Thousand Four Hundred Dollars bearing interest from date until paid at the rate of seven per cent. per annum, do hereby grant bargain and sell unto the said Moore and McFerrin and their heirs and assigns forever the following lands lying in the County of Desha and State of Arkansas, to-wit: Fractional Section thirty-five, 94 12/100 acres; fractional Section thirty-six, 269 84/100 acres, in Township Eleven (11) South, Range one (1) East of the Fifth Principal Meridian. Fractional Section one (1), 155 83/100 acres and fractional Section two (2), 261 15/100 acres in Township twelve (12) South, Range one (1) East of the Fifth Principal Meridian. All on Island numbered Seventy-six and all legal accretions thereunto accruing.

To have and to hold the same unto the said Moore and McFerrin and unto their heirs and assigns forever, with all appurtenances thereunto belonging. And I hereby covenant with the said Moore and McFerrin that I will forever warrant and defend the title to said lands against all claims whatever, and that said lands are free from all liens and incumbrances. It being hereby expressly understood that a lien is hereby retained upon said lots or parcels of land to secure the payment of the residue of the purchase money hereinbefore mentioned.

Witness my hand and seal on this 22nd day of August, 1898.

(Signed) SALLIE H. MURPHY. [SEAL.]

Acknowledgement.

STATE OF ARKANSAS, *County of Pulaski:*

Be it remembered that on this day came before me the undersigned a notary public within and for the County aforesaid,
53 duly commissioned and acting Sallie H. Murphy, to me well known as the grantor in the foregoing deed and stated that she had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public on this 22nd day of August, 1898.

[SEAL.] (Signed) H. G. MARTIN,
Notary Public.

Certificate of Record.

STATE OF ARKANSAS, *County of Desha:*

I Howard Robb, Circuit Clerk and *Ex-Officio* Recorder of the County aforesaid do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 27th day of August, A. D. 1898, at nine o'clock A. M. and the same is now duly recorded with the acknowledgements and certificates thereon in Record Book 11, pages 293 and 294.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 21st day of September, 1898.

[SEAL.] HOWARD ROBB,
Circuit Clerk and Ex-Officio Recorder.

Endorsed: Filed and recorded on this 27th day of August, 1898 at nine o'clock A. M. Howard Robb, Clerk and Recorder. Filed December 15th, 1905. W. P. Feild, Clerk.

54 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it Remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 23rd day of October Anno Domini, One Thousand, Eight Hundred and ninety-nine at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, U. S. District Judge presiding and holding said Court, the following proceedings were had, to-wit: on November 2nd, 1899.

1304.

WILLIAM MOORE and J. S. MCFERRIN, Partners as Moore and McFerrin,

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and D. W. WILSON.

Now on this day come the plaintiffs by their solicitors, Myers and Banks and D. E. Myers, and Rose, Hemingway and Rose, Esqs., and file their bill herein and pray the Court to appoint a Receiver herein and that an injunction may issue against the said defendants to enjoin them from interfering with or moving any logs lying on Island No. 76 in the Mississippi River in this District, and the matter being now heard by the Court—

It is ordered that said defendants be temporarily enjoined from removing any logs claimed by them on Island No. 76 in the Mississippi River, as aforesaid until further orders herein, and that the defendants appear here on the third Monday in December, 1899 and

show cause, if any they can, why such restraining order shall not be continued until the final hearing of this cause, and that a copy of this order be served on each of said defendants.

And it is further ordered that Jacob S. Ross, be, and he is
55 hereby appointed Receiver herein, as prayed, and that he execute a bond with good and sufficient sureties to said defendants in the penal sum of Twenty-five Hundred Dollars ($2500.00) conditioned that he shall well and sufficiently discharge his duties as receiver herein according to law and the orders of the Court, the same to be approved by the Clerk of this Court and be filed in this Court; and that he take and subscribe an oath that he will well and faithfully discharge his duties as Receiver in this cause according to law and the orders of this Court; and that thereupon said Receiver proceed to take into possession the logs named in the original bill filed herein, viz:—About five hundred and sixty cotton wood logs on the river bank of Island 76 in the Mississippi River, within this District and three hundred and fifty cotton wood logs on a raft anchored to the bank of said Island and about eight hundred cotton wood logs on said bank and in the woods of said Island and that he make an inventory of said logs and file it in this Court, and that he proceed to sell said logs to the best advantage, either at public or private sale as shall seem to him best, for the interest and advantage of the parties at the earliest day; that he pay the proceeds of such sale into the Registry of this Court, and report into Court all his proceedings under this order.

(Signed) JNO. A. WILLIAMS, *Judge.*

56 & 57 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 23rd day of October, Anno Domini, One Thousand, Eight Hundred and ninety-nine, at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, U. S. District Judge, presiding and holding said Court, the following proceedings were had, to-wit: on November 4th, 1899.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

It is ordered that the plaintiff execute a bond for injunction in this cause to said defendants in the penal sum of Twenty-five Hundred Dollars ($2500.00) conditioned according to law.

And now comes said plaintiffs and present their injunction bond conditioned according to law in said sum, and the same is by the Court approved and ordered to be filed.

Which injunction bond is as follows:

* * * * * * *

58 & 59 And on November 9th, 1899, the following proceedings were had to-wit:

1304.

MOORE and McFERRIN
vs.
R. J. McGUIRE ET AL.

Comes Jacob S. Ross, heretofore appointed receiver herein and files herein his oath of office and also his bond as such Receiver in the sum of Twenty-five Hundred Dollars with Chas. F. Kroger and William D. Preston, as sureties which bond is by the Court approved as sufficient.

Which oath of office and bond of Receiver is as follows, to-wit:

* * * * * * *

60 And on November 13th, 1899, the following proceedings were had to-wit:

1304.

MOORE and McFERRIN
vs.
R. J. McGUIRE ET AL.

Comes this day the Receiver herein and files herein his report, showing that some of the logs in his possession as such Receiver are encumbered with laborer's liens and asking that he may be allowed to discharge said liens, and that the receipts of the holders thereof may be allowed him as vouchers for money paid in his settlement with the Court—

And it is now ordered that said Receiver discharge said liens and that the receipts of the holders thereof be allowed him as vouchers in his settlement with the Court.

(Signed) JNO. A. WILLIAMS, *Judge.*

Which Report of the Receiver is as follows:

* * * * * * *

61–63 And on December 4th, 1899, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the defendants by J. M. Moore and W. B. Smith, Esqs., their solicitors and by leave of Court enter herein their appearance.

And on December 16th, 1899, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Comes J. S. Ross, Esq., Receiver herein and files his report of sale of logs.

Which Report of sale of logs is as follows:

* * * * * * *

64 And on December 26th, 1899, the following proceedings were had to-wit:—

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the complainants by Rose, Hemingway and Rose, Esqs., their solicitors and by leave of the Court first had and obtained, file herein their amendment to bill.

Which Amendment to Bill is as follows:

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business Under the Firm Name of Moore and McFerrin,

65 *vs.*

R. J. MCGUIRE, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES ET AL.

Amendment to Original Bill.

To the Honorable the Judges of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas:

Your orators, William Moore and J. S. McFerrin, partners as Moore and McFerrin, by leave of the Court in this behalf first had and

obtained, bring this their amendment of their bill of complaint against the said respondents, R. J. McGuire, E. S. Woods *et al.*

And your orators complain and make amendment of their said bill of complaint herein as follows:—

1st. After the word "Arkansas" on the twelfth line of the sixteenth page of said original bill, insert the following, to-wit:

"Your orators further represent and state to your Honors that after they purchased the property in said bill described, to-wit: Island 76 in Mississippi River, which was about August, 1898, in addition to having cut, hauled and rafted the various saw logs and cotton wood timber in the original bill described, they also had deadened about 2500 or 3000 cotton wood trees—perhaps more. This deadening was done principally in 1898, and was for the purpose of allowing the timber to dry somewhat before cutting, in order that it would float more easily. These trees so deadened are very valuable, but being dead they are liable to waste and destruction and practical loss by reason of the fact that the worms will eat into them and they will commence to rot unless handled immediately; and in order to utilize said timber and save it from waste and destruction, it will be necessary to have the receiver take charge of the same, in addition to the logs already cut so that they may be cut, rafted and marketed. Unless this shall be speedily done the whole of said trees will be a practical loss.

This fact was not told to your orator's attorneys at the time the original bill was drafted and the Receiver appointed herein—the fact was overlooked at the time.

Your orators further represent and charge that it is important and necessary that, if the Receiver's authority does not extend
66 over the entire island, or property described in the original bill, it is necessary that his Receivership should be extended to the possession of the entire island in order that the timber thereon may be protected from depredation, and protected for the benefit of the parties who may *be* finally prevail in this law suit.

2nd. After the word "Relief" at the end of the fourth paragraph of the prayer of said original bill, and on the fifth line of the twenty-first page, they amend by adding the following prayers:

"Your orators further pray that the powers of the Receiver heretofore appointed by the Court in this cause, be increased and enlarged so that he shall be directed and empowered to have all the deadened timber on said Island 76, cut and converted into saw logs, hauled, rafted and sold for the best price obtainable, and that he have the power and be directed to pay the necessary expenses of cutting and hauling said timber, and the sale of same, out of the proceeds thereof, and report the net balance, and pay same over into the Registry of this Court as heretofore ordered in reference to the saw logs in the original bill described.

They further pray that this amendment may be taken and considered as a part of the original bill herein and that the defendants be required to answer the same, in connection with the said original bill but not under oath, the oath of the said defendants hereto being specially waived.

Your orators further pray as they have heretofore prayed in their original bill of complaint.

And they further pray that the Court may grant all such orders, both general and special, as the facts of this case may require, and for general relief.

(Signed) ROSE, HEMINGWAY AND ROSE,
MYERS AND BANKS,
Solicitors for Complainants.

STATE OF TENNESSEE, *County of Shelby:*

WILLIAM MOORE and J. S. MCFERRIN, Doing Business as Moore and McFerrin,
vs.
R. J. MCGUIRE, E. S. WOODS ET AL.

67 In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

I, Claude H. Moore, being duly sworn state on oath that I am the Assistant General Manager of the complainants in the foregoing and above styled cause and bill of complaint and as such Assistant General Manager, I am well acquainted with the facts stated in the original bill and this amended bill, and that the statements therein contained as made upon my own knowledge are true, and the statements made upon information and belief to be true.

(Signed) CLAUDE H. MOORE.

Subscribed and sworn to before,
[SEAL.] J. W. APPERSON,
Notary Public.

Endorsed: Filed December 26th, 1899. W. P. Feild, Clerk.

And on January 27th, 1900, the following proceedings were had to-wit:—

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Comes the defendant by J. M. Moore and W. B. Smith, Esqs., their solicitors and by leave of Court file herein their answer.

Which Answer of the defendants is as follows:

of the Eastern District of Arkansas. In Chancery.

W. M. Moore and J. S. McFerrin, Complainants,
vs.
R. J. McGuire et al., Defendants.

Answer.

The defendants reserving the benefit of all manner of exceptions to the many errors and insufficiencies in complainant's bill contained, for answer thereunto, or unto so much thereof as they are advised is material for them to answer, say:

This Court has no jurisdiction of the matters and things set out and alleged in said complaint, because the lands described in complainant's aforesaid bill are not situated within the State of Arkansas, or within the jurisdiction of this Court, and because defendants, nor either of them, are citizens or residents of or found in said district.

Further answering, defendants admit that the lands described in said bill of complaint constitute Island No. 76, situated in the Mississippi River, but they deny that the complainants are the owners in fee of said lands; that they have any interest therein, or that they are, or were, in the legal possession thereof at or before the institution of their aforesaid action.

Defendants have no knowledge in regard to the execution of the several deeds mentioned and set out in complainants' said bill, as constituting the chain of their pretended title, and they deny the execution of said deeds or any of them, or, if said deeds were executed as alleged, that the same conferred title on complainants.

69 They deny that said lands were duly listed and assessed for taxes in Desha County in this state, or that they were legally declared forfeited to the State for taxes, as alleged.

Defendants have no knowledge as to whether the lands described in complainants' bill were embraced in a proceeding instituted by the State of Arkansas in the Circuit Court of Desha County, for the purpose of foreclosing tax liens, under the alleged acts of the legislature, as stated in complainants' aforesaid bill, or as to whether a decree was rendered condemning said lands to be sold, upon the failure to pay certain taxes ascertained to have been due thereon, or as to whether default was made in the payment of such taxes, and a sale under said decree made by a Special Commissioner appointed by the court in the alleged proceeding; and defendants deny the truth of each and every allegation in complainants' bill of complaint contained in respect to the aforesaid proceedings, or of the sale thereunder, or of the purchase of said lands by the said Sallie H. Murphy, and they deny, if such proceeding was had, that the same was valid, or duly conducted in accordance with the provisions of the statutes of the State of Arkansas, or that such sale, if any was made, conferred title upon the purchaser thereat.

They further deny that any valid conveyance was executed in any

such proceeding as is set out in complainants' bill, whereby said [illegible] vested in the said Sallie H. Murphy at and under a sale made by a Special Commissioner appointed by the Circuit Court of Desha County, in Chancery, as alleged in said bill of complaint.

Defendants deny that the said Sallie H. Murphy ever took or had possession of the land described in complainants' aforesaid bill, or that complainants, or either of them, took possession under a conveyance from the said Sallie H. Murphy, and continued to hold possession of said land, as alleged in their bill of complaint.

Defendants have no knowledge as to whether the lands mentioned and described in said bill of complaint have been taxed in the State of Arkansas, or as to whether the taxes thereon have been
70 collected and paid to the State of Arkansas from the year 1847 down to the present time or not, but they deny that said lands were situated within the limits of the State of Arkansas, or were subject to taxation therein, and they are advised and aver that if it be true, as alleged, that any taxes were assessed thereon by the State of Arkansas, and were paid to said state, the same was done without legal authority and did not in any wise affect the question as to the jurisdiction within which said lands were situated.

Defendants admit that it is true, as alleged, that the Territory of Arkansas was admitted into the Union as an independent state by the Act of Congress approved June 15th, 1836, fixing the middle of the main channel of the Mississippi River as the eastern boundary of said state.

It is likewise true that in 1846, W. Pelham, the United States Surveyor General for the State of Arkansas, made a plat of said lands in which the said Island No. 76 and the tracts of land constituting the same were platted, but defendants deny that said plat was, or purported to be, a plat of the State of Arkansas, and allege that the same was a plat of said land, and that it appears from said plat that the said island, and all the lands embraced therein, are situated east of the middle of the main channel of the Mississippi River, and that no part of said island is, in fact, within the limits of said state, and they deny that said island has belonged to or constituted a part of the State of Arkansas, or that the same has been so treated since the year 1847 by any one having authority to determine said question.

Respondents deny that the Act of Congress admitting the territory of Mississippi into the union as a state fixed the eastern bank of the Mississippi River as the western boundary of said state.

Respondents have no knowledge and cannot, at present, answer the allegation contained in said bill of complaint as to the language used by the Legislature of the State of Mississippi in an act alleged to have been passed on February 24th, 1836, and in subsequent acts, for the purpose of establishing and fixing the boundary lines
71 of the County of Bolivar in said State, but they deny that it was the intention or the effect of any act passed by the Legislature of said State to fix the east bank of the Mississippi River as the western boundary of said County.

On the contrary, the respondents state and charge that the Act of

Congress of March 1st, 1817, admitting Mississippi as a state, fixed the middle of the Mississippi River as its western boundary, and the Legislature of Mississippi, in an Act approved February 27th, 1856, and in various other acts, so declared and said State of Mississippi has been in possession of said territory continuously since 1817, exercising juridiction therein.

They deny that at the time of the survey made and filed by Pelham, as Surveyor General for the State of Arkansas, as aforesaid, the main channel of the Mississippi River was east of the property described in said bill of complaint as Island No. 76. On the contrary, they allege that at that time, and long prior thereto, the plats of the official surveys of said Island show the same to have been situated east of the main channel of the Mississippi River.

Respondents say that it is true that the State of Mississippi, in the year 1892, sold and disposed of the lands constituting said Island No. 76, and obtained title thereto under a forfeiture for taxes made long prior to the date of said sale, but it is not true that said State, or any proper official thereof, abandoned the state's claim of jurisdiction over said Island, or conceded that jurisdiction thereof belonged to the State of Arkansas. They deny that any official of the State of Mississippi refunded the purchase money to the purchaser of said property at the sale made thereof by the state as aforesaid, upon the erronous belief that the same was not subject to sale, or that the sale thereof had not been duly or properly authorized; and they aver that any such act or acts on the part of any official of the State of Mississippi, if the same had been done, was unauthorized and ineffectual, for the purpose of altering, changing or affecting the question as to the territorial boundary of said state, or the location of said land in respect to the State to whose jurisdiction it belongs,
72 or even as effecting the title of the purchaser of said land from the State of Mississippi, unless the same had been accompanied by a reconveyance of said land authorized by law from the purchaser thereof to the State of Mississippi.

Respondents deny that in the summer or fall of 1898, the complainants bought said property *bona fide*, and took possession of said Island, established a camp and foundation for tents and houses thereon, as is alleged in their said bill of complaint. They say that when these defendants became the owners of said island, no one was on the same, or in possession thereof, and the defendants, therefore, took quiet and peaceable possession of said property as they had the right to do. The complainants thereafter attempted to take possession of said tracts of land and oust respondents therefrom, and they admit that complainants did over defendants protest, in pursuance of a scheme to acquire forcible and unlawful possession of said land and of the timber growing thereon, set men to cutting the timber growing on said Island, thereby forcing respondents to institute legal proceedings in the courts of the State of Mississippi, for the purpose of recovering timber that had been severed by complainants, and also to institute an action of forcible entry and detainer to obtain possession of said lands, all which proceedings are now pending in the State and Federal Courts of the State of Mississippi.

Defendants deny that said actions are without authority of law, or beyond the jurisdiction of said courts, or that the same were instituted for any other purpose than to enable respondents to protect

stituted for any other purpose than to enable respondents to protect

their title and interest in said lands against the unlawful and fraudulent acts of the complainants.

Defendants deny that either the State of Mississippi or the State of Arkansas claim said lands under the Swamp Land Act passed by Congress, and approved September 24th, 1852. They deny that complainants claim title to said Island No. 76 under a title derived from the State of Arkansas under the Swamp Land Act of 1850, or that respondents are claiming title to said Island through a grant of the State of Mississippi under the Swamp Land acts of Con-
73 gress.

And in that behalf, respondents represent that said lands were duly assessed for taxes in Bolivar County, State of Mississippi, in and for the year 1881, the taxes not having been paid thereon, and said lands having become delinquent, the same were offered for sale and became forfeited to the State of Mississippi, for non-payment of taxes, at a tax sale held in the year 1882, for the non-payment of taxes of 1881, whereby the State of Mississippi acquired title to said lands under and by virtue of said tax proceedings; that on October 26th, 1891, the State of Mississippi conveyed all of Section Thirty-seven (37), Township Twenty-one (21), Range Eight (8) West, to J. T. Curry and M. A. Hull, and on September 28th, 1891, the State of Mississippi conveyed to the same parties all of Section Thirty-six (36), in said township and range. Subsequent to the conveyance of said tracts of land to the said Curry & Hull, they became delinquent for the taxes of the year 189–, and were sold for taxes at a tax sale held in the year 189–, and forfeited to the State of Mississippi; that on August 10th, 1899, said lands not having been redeemed, the State of Mississippi sold and conveyed to Malvina May Scott Lot Six (6) in the South half of Lot Five (5), in Section Thirty-six (36), in the township and range aforesaid, and on the same date sold and conveyed to W. H. Fitzgerald the South half of Lot Eight (8) in said Section Thirty-six (36), and Lot Two (2), in Section Thirty-seven (37), in the township and range aforesaid, and on the same date sold and conveyed to E. M. Scott, Lot Seven (7) in the North half of Lot Eight (8), in Section Thirty-six (36) in the township and range aforesaid, and on the same date sold and conveyed to M. Y. Scott Lots One (1) and Three (3), in Section Thirty-seven (37), in the township and range aforesaid, and on the same date, conveyed to M. A. Yerger Lot One (1), and the North half of Lot Two (2), in Section Thirty-six (36), in the township and range aforesaid; and on the same date, sold and conveyed to E. H. Woods, the South half of Lot Two (2) and all of Lot Three (3), in Section Thirty-six (36), in the township and range
74 aforesaid and on the same date, sold and conveyed to E. S. Woods Lot Four (4), and the North half of Lot Five (5), in Section Thirty-six (36), township and range aforesaid.

That on the 12th day of October, 1899, the said W. H. Fitzgerald, Malvina May Scott, E. M. Scott, M. Y. Scott, M. A. Yerger, E. H.

Woods and E. S. Woods, as the owners of the aforesaid lands under the patents executed to them respectively by the State of Mississippi, as aforesaid, by deed *inter partes*, granted and conveyed, each to the other, an undivided interest in all of said lands, so that all of said parties became joint and equal owners as tenants in common of the aforesaid lands under the conveyances to them severally made by the State of Mississippi, hereinbefore referred to.

Defendants further represent that on the — day of ——, 189–, the said Curry & Hull conveyed said land to the defendant, R. J. McGuire, and that on October 12th, 1899, the said R. J. McGuire, and his co-defendants, held conflicting claims of title under the aforesaid conveyances executed to said parties severally by the State of Mississippi, and for the purpose of compromising and settling the conflicts as to the title held by them respectively, under the aforesaid conveyances, they agreed to and did execute a deed *inter partes*, under the operation of which the said R J. McGuire acquired an undivided one-half interest in all of said lands, and his co-defendants, the said W. H. Fitzgerald, Malvina May Scott, E. M. Scott, M. Y. Scott, M. A. Yerger, E. H. Woods and E. S. Woods, each acquired a one-fourteenth interest in said lands.

Respondents herewith file copies of all the aforesaid conveyances as exhibits to their answer.

And having fully answered the allegations contained in the complaint in this cause, defendants pray that they be hence dismissed with their reasonable costs.

——— ———,
Attorneys for Defendants.

Endorsed: Filed Jan. 27, 1900. W. P. Feild, Clerk.

75 EXHIBIT 1.

THE STATE OF MISSISSIPPI:

This Indenture made and entered into this the 26th day of October A. D. 1891 between the State of Mississippi of the first part and J. T. Currie and M. A. Hull of the second part Witnesseth: That whereas, there was sold on the 6th day of March, A. D. 1882 to the State of Mississippi for Taxes due the State, the following tract of Land, to Wit;

Division of section.	Section.	Township.	Range.	Acres.
All fract.....	37	21	8 W	185

Situated in Bolivar County, Containing One hundred and Eighty five acres more or less, and whereas the said party of the second part desires to purchase said tract of Land under the provisions of the laws of Mississippi, in such cases provided, and has this day applied to purchase said land and paid the sum of Thirty Eight Dollars and seventy five cents. And in Consideration of the premises and the amount paid the State of Mississippi in accordance with the statutes

of the State, the State of Mississippi, has this day bargained, sold and conveyed, and by these presents, does hereby bargain, sell, and convey to the said parties of the second part, their heirs and assignes forever, the aforesaid tract of land as above described, to have and to hold the same to said parties of the second part their heirs and assignes forever. The State — Mississippi hereby Warrants the title to said Lands according to the statu-e in such cases made and provided, and not otherwise. In Testimony whereof these presents are signed, sealed, and delivered, in the State of Mississippi, by W. W. Stone Auditor of Public Accounts; who has hereunto subscribed his name and affixed his seal of office, this the 26th day of October, A. D. 1891.

[L. S.] W. W. STONE,
Auditor of Public Accounts.

Filed for record Nov. 2nd, 1891 at 1.40 o'clock P. M. And truly recorded Nov. 2nd, 1891.

T. R. McGUIRE, *Clk.*
—— ——, *D. C.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for
76 said County, do hereby certify that the foregoing two pages contain a whole, true and correct copy of Deed or Patent from the State of Mississippi to J. T. Currie and M. A. Hull as the same appears of Record in Book XX. page 24 in my office.

Witness my hand and official seal, this the 11th day of May A. D. 1903.

L. E. EDWARDS, *Clerk.*

Filed Dec. 20th, 1905.
W. P. FEILD, *Clerk.*

77 EXHIBIT 2.

No. 6951.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, Malvina May Scott desiring to purchase Lot 6 & S. ½ of Lot 5 of Section 36 Town 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, The State of Mississippi, in consideration of the premises, and the sum of $32.00, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said Malvina May Scott the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D. 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:
A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes *A.* M., and that the same was this day recorded in Deed Record Book B 10 at page 42.

Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*
[SEAL.] W. A. SHELBY, *D. C.*

78 Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k. W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

79 EXHIBIT 3.

No. 6952.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, W. H. Fitzgerald desiring to purchase S. ½ of Lot 8, in Sec. 36 & Lot 2 of Section 37 Town. 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, the State of Mississippi, in consideration of the premises, and the sum of $37.25, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said W. H. Fitzgerald the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:
A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes P. M., and that the same was this day recorded in Deed
80 Record Book B 10 at page 43.

Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*
[SEAL.] W. A. SHELBY, *D. C.*

Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k. W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

81 EXHIBIT 4.

No. 6953.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, E. M. Scott desiring to purchase Lot 7 & N. ½ of Lot 8 of Section 36 Town. 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, The State of Mississippi, in consideration of the premises, and the sum of $31.25, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said E. M. Scott the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:
A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes

P. M., and that the same was this day recorded in Deed Record Book B 10 at page 44.

82 Witness my hand and official seal this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*

[SEAL.] W. A. SHELBY, *D. C.*

Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k. W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

83 EXHIBIT 5.

No. 6954.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, M. Y. Scott desiring to purchase Lot 1 & Lot 3 of Section 37 Town 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, The State of Mississippi, in consideration of the premises, and the sum of $31.50, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said M. Y. Scott the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,

[SEAL.] *Land Commissioner.*

Countersigned:

A. J. McLAURIN, *Governor.*

J. L. POWER,

Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes P. M., and that the same was this day recorded in Deed Record Book B 10 at page 45.

Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*

[SEAL.] W. A. SHELBY, *D. C.*

84 Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k., W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

85 EXHIBIT 6.

No. 6955.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, W. A. Yerger desiring to purchase Lot 1 & N. ½ of Lot 2 of Section 36 Town 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, the State of Mississippi, in consideration of the premises, and the sum of $32.75, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said W. A. Yerger the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:
A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes P. M., and that the same was this day recorded in Deed Record Book B 10 at page 46.

Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*
[SEAL.] W. A. SHELBY, *D. C.*

86 Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k., W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

87 EXHIBIT 7.

No. 6956.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Ferfeited Tax Lands of the State of Mississippi, and whereas, E. H. Woods desiring to purchase the S. ½ of Lot 2 & all of Lot 3 of Section 36 Town. 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, The State of Mississippi, in consideration of the premises, and the sum of $31.50 being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said E. H. Woods the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:

A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes P. M., and that the same was this day recorded in Deed Record Book B 10 at page 47.

88 Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*
[SEAL.] W. A. SHELBY, *D. C.*

Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k. W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

89 EXHIBIT 8.

No. 6950.

Forfeited Tax Land Patent.

STATE OF MISSISSIPPI:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, Elizabeth S. Woods desiring to purchase Lot 4 & N. ½ of Lot 5 of Section 36 Town. 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, The State of Mississippi, in consideration of the premises, and the sum of $32.50, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said Elizabeth S. Woods the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:
A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes P. M., and that the same was this day recorded in Deed Record Book B 10 at page 41.

90 Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*
[SEAL.] W. A. SHELBY, *D. C.*

Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k. W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

91 EXHIBIT 9.

Deed.

R. J. McGuire *et al* to W. H. Fitzgerald *et al.*

This instrument made and entered into on this the 12th day of October A. D. 1899, by and between R. J. McGuire party of the first part and E. S. Woods, E. H. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger and W. H. Fitzgerald parties of the second part Witnesseth; That whereas the said party of the first part, Claims to be the owners of Island 76 in Bolivar County Mississippi, and whereas the said parties of the second part, Claim to be the owners, of said Island, and whereas all the said parties are desirous of ending said Contention, and in order so to do have agreed to execute this instrument,

Now therefore in Consideration of the premises and the execution of this instrument, the said party of the first part has and does hereby convey, and specially warrant, to the said parties, of the second part an undivided half interest in and to the aforesaid Island, and all timbers situated thereon and all timber thereon whether cut or standing,--and all timber cut heretofore from said Island, and now rafted or floated in the river, or cut off adjacent thereto, to have, and to hold the same to the said parties, of the second part, their heirs, and assigns in fee simple and in consideration thereof the said parties, of the second part have, and doth hereby convey and specially warrant, to the said R. J. McGuire, an undivided half interest in and to said Island, and all timber standing thereon and all timber thereon whether cut or standing and all timber heretofore cut from said Island, and now rafted or floated in the river or cut off adjacent thereto, to have and to hold the same to him his heirs and assignes in fee simple.

In making this conveyance it is distinctly understood and agreed that the said parties of the second part, are to have a first charge against said Island, to reimburse them for the purchase money thereto paid by them to the State of Mississippi as per deed executed by the State—and now recorded in the Chancery Clerk's office in Bolivar County Mississippi and also for the expenses incurred by them, the said parties of the second part in securing said title and in taking and holding possession of said Island through C. L.
92 Jones Jr. who is now on the same as representative of the said parties of the second part, and the sum so due to the said parties of the second part for the above mentioned purchase money and the expenses, it is hereby understood, and agreed, shall be secured by an equitable lien, or Mortgage, which is hereby granted to them *and* said Island for that purpose, and which shall remain, in full force and effect, until the said sum of money is paid.

It is further understood and agreed that the said party of the first part shall have a charge on said Island for the expense incurred by him in and about the purchase thereof and in and about the inforce-

ment of his rights to said Island, and said timber, which expenses do not exceed in all, the sum of One hundred and twenty five Dollars, and to secure the same, an equitable lien was granted, to the said first party, on the aforesaid Island, which shall remain, in full force and effect, until the said sum- so expended by the said party of the first part, are repaid to him.

It is distinctly understood and agreed, that no Lawyer fee shall be Counted by either party, and that the aforesaid sum due to said parties respectively, shall be paid in one year from this date, or earlier than that if the proceeds from the sale, of aforesaid Island or any of said timber, shall be sufficient for that purpose.

The said Island is situated in Bolivar County, Mississippi as is more particularly described as follows to wit:

Lots 1. 2. 3. 4. 5, 6, 7 and 8, Sec. 36 and

Lots 1, 2, and 3 Sec. 37, in Township 21 Range 8 West.

Witness *and* signatures, this instrument being executed in duplicate on this the 12th day of October, A. D. 1899.

R. J. McGUIRE.
E. M. SCOTT.
W. A. YERGER.
M. Y. SCOTT.
E. S. WOODS.
M. M. SCOTT.
E. H. WOODS.
W. T. FITZGERALD.

Rev. Stamp $2.50.

93 STATE OF MISSISSIPPI, *Bolivar County:*

Personally appeared before me the undersigned S. A. Hinds a Justice of the Peace in and for said County, and State the within named R. J. McGuire, and the within named E. S. Woods, E. H. Woods M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger and W. H Fitzgerald who severally acknowledge that they each signed and delivered the foregoing deed and agreement, as their several acts and deed on the day and year therein mentioned.

Witness my signature (there being no official seal) on this the 16th day of October, A. D. 1899.

S. A. HINDS,
Justice of the Peace.

STATE OF MISSISSIPPI, *County of Bolivar, ss:*

Personally appeared before me W. A. Stone, Clerk of the Chancery Court of the County of Bolivar the above named R. J. McGuire who acknowledged that he signed and delivered the foregoing deed on the day and year therein mentioned as his act and deed.

Given Under my hand and seal of said County this 12th day of October, A. D. 1899.

[L. S.]

W. A. STONE, *Clerk.*
W. O. SHELBY, *D. C.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, E. L. Edwards, Clerk of the Chancery Court in and for said County, do hereby certify that the foregoing Five pages contain a whole, true and correct copy of Deed from R. J. McGuire *et al.* to W. H. Fitzgerald *et al.* as the same appears of record in Book D page 319 in my office.

Witness my hand and official seal, this the 11th day of May, A. D. 1903.

L. E. EDWARDS, *Clerk.*

Filed Dec. 20th, 1905.
W. P. FEILD, *Clerk.*

94 EXHIBIT 10.

Deed.

J. T. Currie to R. J. McGuire.

In consideration of One Dollar to me cash in hand paid the receipt of which is hereby acknowledged, I hereby convey and forever quit-claim to R. J. McGuire all my right title and interest no matter how acquired in and to sections thirty six and thirty seven, township 21 range 8 west. (sects. 36 and 37, T 21, R. 8 W.) in Bolivar County, Mississippi known as Island 76.

Witness my signature this Sept. 1899.

J. T. CURRIE.

STATE OF MISSISSIPPI, *Washington County:*

Personally appeared before the undersigned officer authorized by the laws of Mississippi to take and certify acknowledgments. J. T. Currie who acknowledged that he signed and delivered the foregoing deed on the day and year therein mentioned.

Witness my hand and seal of office this the 12th day of September 1899.

[OFFICIAL SEAL.] H. H. O'BANNAN, *J. P.*

Filed for record September 13th at 2:20 O'Clock P. M. and truly recorded Sept. 13th 1899.

W. A. STONE, *Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for said County, do hereby certify that the foregoing One page contains a whole, true and correct copy of Deed from J. T. Currie to R. J. McGuire as the same appears of record in Book D[3] page 364 in my office.

Witness my hand and official seal, this the 11th day of May, A. D. 1903.

L. E. EDWARDS, *Clerk.*

Filed Dec. 20th, 1905.
W. P. FEILD, *Clerk.*

95 EXHIBIT 11.

Deed.

N. B. Hull to R. J. McGuire.

For and in consideration of One Dollar to *me* cash in hand paid *me* hereby convey and quitclaim to R. J. McGuire all our right title and interest whether acquired by deed, deed in trust Mortgage or otherwise in and to the following described lands situated in Bolivar County, Mississippi to wit:

Sections thirty six (36) and thirty seven (37) township twenty one (21) range Eight (8) west.

Witness our signatures this August 26th, 1899.

MARTHA A. HULL,
By N. B. HULL.
N. B. HULL.

STATE OF MISSISSIPPI, *Washington County:*

Personally appeared before the undersigned, Justice of the Peace N. B. Hull who acknowledged that he signed and delivered the foregoing instrument of writing on the day and year therein mentioned.

Witness my signature this 12th September, 1899.

[SEAL.] H. H. O'BANNON, *J. P.*

Filed for record Sept. 13th, 1899. at 2:20 O'Clock P. M. and truly recorded Sept. 13th, 1899.

W. A. STONE, *Clerk.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for said County, do hereby certify that the foregoing One pages contain- a whole, true and correct copy of Deed from N. B. Hull to R. J. McGuire as the same appears of record in Book D[3] page 364 in my office.

Witness my hand and official seal, this the 11th day of May, A. D. 1903.

L. E. EDWARDS, *Clerk.*

Filed Dec. 20th, 1905.
W. P. FEILD, *Clerk.*

96 EXHIBIT 12.

Deed.

E. H. Woods to W. H. Fitzgerald.

This indenture made and entered into on this the 12th day of October, A. D. 1899 by and between the respective parties below mentioned, each dealing with all of the others, Witnesseth, that whereas the said parties heretofore purchased from the State of Mississippi, the lands hereinafter described, which lands constitute what is commonly known as Island 76, and, whereas the said parties find it to their mutual interest that they shall own the said Island as tenants in common, each owning an undivided one seventh interest therein instead of owning the same in severalty, as at the present time.

Now therefore in consideration of the premises, and the execution of this instrument which is intended to place the title as above mentioned each of the undersigned parties has, and doth hereby convey each of the other parties to this instrument an undivided one seventh interest in and to that part of said Island 76, that now belongs to the said grantor as shown by deed or patent from the State of Mississippi duly recorded in Deed Book B[10] in the County of Bolivar situate in said State, to have and to hold the interests herein conveyed to the respective grantees in fees simple forever.

The true interest and meaning of this conveyance is as above stated, that each of the undersigned parties shall be and they are now vested with a legal title to an undivided one seventh interest in and to all of the lands constituting said Island 76, and such interest is hereby accordingly conveyed. The said lands are situated in Bolivar County and State of Mississippi, and are otherwise more particularly described as follows to wit:

Lots 1. 2. 3. 4. 5. 6. 7 and 8, Section 36 and lots 1, 2 and 3, Section 37 all in Township 21, Range 8, West. Witness *and* signatures on this the 12th day of October A. D. 1899 there being seven originals of this instrument, so that each of said grantees may hold a copy thereof.

E. H. WOODS.
W. H. FITZGERALD.
E. M. SCOTT.
97 W. A. YERGER.
M. Y. SCOTT.
E. S. WOODS.
M. M. SCOTT.

STATE OF MISSISSIPPI, *Bolivar County:*

Personally appeared before me S. A. Hinds a Justice of the Peace in and for said State and County the within named E. S. Woods, E. H. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger and W. H. Fitzgerald who severally acknowledge that they each signed and delivered the foregoing deed, as the several act- and deed- of each of them on the day and year therein mentioned. Witness my signature (there being no seal of office) on this, the 16th day of October A. D. 1899.

S. A. HINDS, *J. P.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for said County do hereby certify that the foregoing Three pages contain a whole, true and correct copy of Deed from E. H. Woods to W. H. Fitzgerald as the same appears of record in Book D³ page 412 in my office.

Witness my hand and official seal, this the 11th day of May A. D. 1903.

L. E. EDWARDS, *Clerk.*

Filed Dec. 20th, 1905.
W. P. FEILD, *Clerk.*

98 And on January 29th, 1900, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Now on this day on motion of the defendant it is ordered that the Receiver, Jacob S. Ross, file a report showing upon what evidence he allowed the claim of O. L. Sanders for $1531.38 for cutting and rafting timber in controversy in this cause, and containing a detailed statement of the amount and kind of labor performed by the said Sanders, the date at which and upon whose request or by whose employment the same was performed.

(Signed) JNO. A. WILLIAMS, *Judge.*

And on the same day the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

On this day come the plaintiffs by Rose, Hemingway and Rose, Esqs., their solicitors, and also come the defendants by John M. Moore, Esq., their solicitor and by consent—

It is now ordered that the Receiver heretofore appointed in this cause take possession of the whole of Island No. 76 of the Mississippi River, and that he hold it as such Receiver, subject to the future orders of this Court. And it appearing now that there is a considerable quantity of timber on the Island that has been girdled and is in danger of decay if not cut and utilized at an early day—

It is therefore ordered that the Receiver proceed to cut such timber as may have been girdled, and that he make sale of the same to the best advantage possible for the fund in his hands, and that he report his proceedings under this order to the Court whenever he shall have disposed of said timber.

It is further ordered that before he begin cutting the girdled timber, he notify the parties to this cause, and give them opportunity to examine said timber for the purpose of determining with
99 the Receiver what timber comes within this order.

All the parties to this cause are hereby enjoined from cutting any timber standing on said Island or from disposing of any timber that may have been cut and that may be in the possession or control of said parties or any of them, and it is ordered that any of the parties having in their possession or control any timber that may have been cut on said Island, deliver the same to the Receiver.

(Signed) JNO. A. WILLIAMS, *Judge.*

And on March 23rd, 1900 the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the defendants by J. M. Moore, Esq., their solicitor, and file herein their Exhibits numbered from one to twelve, both inclusive, to answer heretofore filed herein.

Which Exhibits to answer are as follows, to-wit:

(See Exhibits following answer Folio 75 this Record.)

100 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of

Arkansas, begun and holden on Monday, the 9th day of April anno Domini, One Thousand Nine Hundred, at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, U. S. District Judge presiding and holding said Court, the following proceedings were had, to-wit: on July 2nd, 1900.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the complainants by Rose, Hemingway and Rose, Esqs., their solicitors, and file herein their replication.

Which replication is as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas, Western Division.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business as Moore and McFerrin,
vs.
R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the plaintiffs and by way of replication they say that the answer of the said defendants is not true in fact or good in law, and that their said bill and amendment filed herein are both good and sufficient in law and true in fact, as they will maintain and prove to the Court at such time and place as the Court may direct.

(Signed) ROSE, HEMINGWAY AND ROSE,
For Plaintiffs.

Endorsed: Filed July 2nd, 1900, W. P. Feild, Clerk.

101 & 102 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 22nd day of October anno Domini, One Thousand Nine Hundred, at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber U. S. District Judge presiding and holding said Court, the following proceedings were had, to-wit: on November 5th, 1900.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Now on this day come the plaintiffs by Rose Hemingway and Rose, Esqs., their solicitors and also come the defendants by J. M. Moore and W. B. Smith, Esqs., their solicitors and by consent of the parties—

It is now ordered that this cause be set for final hearing on the Fourth Tuesday of March, 1901, and that both parties have leave to take depositions in this cause until that day.

(Signed) JACOB TRIEBER, *Judge.*

* * * * * * *

103 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, beg in and holden on Monday, the 21st day of October anno Domini, One Thousand Nine Hundred and one at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber, U. S. District Judge presiding and holding said Court, the following proceedings were had, to-wit: on January 2nd, 1902.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the complainants by Rose, Hemingway and Rose and Myers and Banks, Esqs., their solicitors and come the defendants by Chas, Scott, Woods and Scott, Esqs., their solicitors, and file herein their agreement of counsel, which is in the words following to-wit:

United States Circuit Court, Eastern District of Arkansas, Western Division.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Agreed by Counsel in this cause;

1st. An abstract of title duly filed by the manager of any abstract office for making abstracts of the lands in controversy may be received in evidence on the hearing, unless one or the other parties shall object to a particular conveyance, and shall require its produc-

tion by notice given twenty days before the trial of the cause. Either party however, desiring to use such abstract of title shall furnish copy of same to the opposite party twenty-five days before said trial.

104 2nd. Certified copies of letters that pass between the United States, the Commissioner of the General Land Office and the Attorney General of Mississippi, may be read as evidence in this case without objection by either party, except as to relevancy and competency, and either party may object to said letters on the above grounds alone, this agreement being merely intended to waive the mere matter of form in the manner of trying to introduce them as evidence.

(Signed) CHAS. SCOTT,
WOODS AND SCOTT,
Sol's for Def'ts.
MYERS AND BANKS,
Of Counsel for Complainants."

105 The following Abstract and letters were introduced and read by the Complainants at the final hearing of this cause.

106 *Abstract of Title Prepared for Meyers & Banks, Att'ys, by Dickinson & Jones, Abstracter- of Titles, Arkansas City, Ark.*, 10, '7, 1899.

Description of Property under Examination in Desha County, Ark.

Sec. 35, T. 11 S., R. 1 E, 94.12 acres.

When the consideration, acknowledgment, and release of dower in any conveyance described in this abstract are good, no mention of that fact is made. Defects are noted on margin under head of "Remarks."

Record.		Date of inst.			Date of filing.			Grantor.	Grantee.	Instrument.	Description.					Remarks.
Book.	Page.	Month.	Day.	Year.	Month.	Day.	Year				Parts of Section.	Sec.	Town'p.	Range.	Area.	
		5	11	1829	6	23	1847	U. S.	State of Ark		N E ¼ on island	35	11	1 E	94.12	S. S. Act, Sept. 28, 1850, App. 5 | 7 | 1858.
									Joseph Dempsey		S E ¼					
D	205	1	31	52	1	31	52	Joseph Dempsey	B. B. Bartholow	W. D.	S E ¼ frl ¼					
"	316	9	24	52	12	15	53	Geo. S. Crane, ald	Wm. & David Williams	" "	S W ¼ "					
"	454	3	17	54	3	10	54	B. B. Bartholow & wife	W. & D. Williams	" "	S E ¼ "					
E	110	10	28	54	1	4	55	W. & D. Williams & wives	J. H. M Neblett	" "	N E " Island 76					Other lands included.
H	410	3	29	60	3	31	60	J. H. M. Neblett	C. H. Craig	" "	S E ¼ frl					
C no	496	11	3	70	12	9	70	Andrew Frau	H. B. & C. F. Putnam and F. A. Poggle.	" "	S E ¼ "					
No 2	142	8	14	75	8	14	75	Jno M. Grayson, clk	State of Ark	Clk deed.	N E frl ¼					For taxes 1871.
No 6	577	4	1	86	2	28	87	J. S. Ross, com'r	Mrs. S. H. Murphy	Com. D.	E ½ "					Overdue taxes sale.
" 11	293	8	22	98	8	27	98	Mrs. S. H Murphy	Moore & McFerren	W. D.	All frl Sec. 35					Lien retained.
As	134	8	12	98	8	15	98	State by Ritchie, com'r	Mrs. S. K. Murphy	Pat.	N E fl ¼					

Description of Property under Examination in Desha County, Ark.

Sec. 36, T. 11 S., R. 1 E., 269.84 Acres.

When the consideration, acknowledgment, and release of dower in any conveyance described in this abstract are good, no mention of that fact is made. Defects are noted on margin under head of "Remarks."

Record.		Date of inst.			Date of filing.			Grantor.	Grantee.	Instrument.	Description.					Remarks.
Book.	Page.	Month.	Day.	Year.	Month.	Day.	Year.				Parts of section.	Sec.	Town'p.	Range.	Area.	
		6	23	1817	...	...	....	U. S.	Geo. S. Crane	(5030)	S. E. 1841 N E f'l ¼	36	11	1 E	269.84	
		7	17	47	...	...	.....	U. S.	Geo. Jeffries	(5747)	S E ¼ on island					
		7	26	47	...	...	.....	U. S.	Geo. S. Crane	E ½ S W ¼	E ½ S W ¼					
		6	23	47	...	...	.....	U. S.	Joseph Dempsey	(5029)	W ¼ S W ¼ sec. 36 and S E ¼ sec 35,					
D	205	1	31	52	1	31	52	Josaphine Dempsey	B. B. Bartholow	W. D.	W ½ S W ¼ fl					
D	316	9	21	52	12	15	53	Geo. S. Crane & W.	Wm. & D. Williams	W. D.	N ½ fl & S W ¼ Isl 76					
"	454	3	7	54	3	10	54	B. B. Bartholow & wife	Wm. & D. Williams	"	W ½ of S W ¼ f'l					
H	410	3	29	60	3	31	60	J. H. M. Neblett	C. H. Craig	"	N ½ fl & S W ¼ fl					
C No	496	11	3	70	12	9	70	Andrew Frau	H. B. & C. F. Putnam and F. A. Poggle.	"	W ½ W ½ S W ¼ & S W ¼ fl. N W ¼ & S W ¼ fl.					
No 2	158	8	14	75	8	14	75	Jno. L. Grayson clk	State of Arkansas	Clk D.	W ½ S W ¼ & W fl ½ of N W ¼.	.....	.....	.....	.....	Forfeited for taxes 1872 vs. J. M. Pinell
N 4	54	6	14	79	6	14	79	J. P. Jones clk	" " "	" "	N W ¼ & S E ¼ & E ½ of S W ¼	.....	.....	.....	.....	Forfeited for taxes
No 6	577	4	1	86	12	28	87	J. S. Ross com'r	Mrs. S. H. Murphy	Com'r D.	N W ¼ & S ½	.....	.....	.....	.....	Overdue tax sale
No 11	293	8	22	98	8	27	98	Mrs. S. H. Murphy	Moore & McFerrin	W. D.	All of sec 36	.....	...	.....	.....	Lien retained.

108 *Abstract of Title Prepared for Meyers & Banks, Att'ys, by Dickinson & Jones, Abstracter- of Titles, Arkansas City, Ark.*, 10/7, 1899.

Description of Property under Examination in Desha County, Ark.

Section 1, T. 12 S., R. 1 E., 155 $\frac{11}{160}$ Acres.

When the consideration, acknowledgment, and release of dower in any conveyance described in this abstract are good, no mention of that fact is made. Defects are noted on margin under head of "Remarks."

Record.		Date of Inst.			Date of filing.			Grantor.	Grantee.	Instrument.	Description.					Remarks.
Book.	Page.	Month.	Day.	Year.	Month.	Day.	Year.				Parts of section.	Sec.	Town'p.	Range.	Area.	
		7	17	47	...	...	.....	U. S	Jno. R. Wilkinson	(5143)	N E fr'l ¼ (in Isl.)	1	12	1 E.		
		7	17	47	...	...	.....	U. S.	" " "	(5244)	N W fr'l ¼ (in Isl.)					
		7	17	47	...	...	.....	U. S	Jno. J. Lovin	(5745)	S W fl ¼ (in Isl.)					
C no.	496	11	3	70	12	9	70	Andrew Frau	H. B. & C. F. Putnam & F. A. Poggle.	W. D.	S W fl ¼ (in Isl.)					
No. 4	54	6	14	79	6	14	79	J. P. Jones Cl'k	State of Ark	Cl'k's D.	Fr l Sec.	.....	...	.....	.....	Forfeited for taxes.
No. 6	577	4	1	86	2	28	89	J. S. Ross Com'r	Mrs. J. H. Murphy	om'r's D	Fr'l Sec.	.....	...	.....	.....	Overdue tax sale.
No. 11	293	8	22	98	8	27	98	Mrs. S. H. Murphy	Moore & McFerrin	W. D.	Fr'l Sec.	.....	...	.....	.....	Lien retained.

Description of Property under Examination in Desha County, Ark.

Section 2, T. 12 S., R. 1 E., 261 $\frac{55}{100}$ Acres.

When the consideration, acknowledgment, and release of dower in any conveyance described in this abstract are good, no mention of that fact is made. Defects are noted on margin under head of "Remarks."

Record.		Date of inst.			Date of filing.			Grantor.	Grantee.	Instrument.	Description.				Remarks.
Book.	Page.	Month.	Day.	Year.	Month.	Day.	Year.				Parts of section.	Sec.	Town'p.	Range.	Area.	
		7	17	1847	...	...	.....	U. S.	Jno. J. Lovin	(5146)	N ½ N E ¼ f'l (in Island)	2	...	1 E		
		7	10	1 47	...	...	.....	U. S.	Jno. J. Lovin	(5078)	S. E f'l ¼ & S ½ N E f'l ¼					
		...	...	.....	...	...	.....	U. S	State of Ark.	.....	S W f'l ¼ (in Island)	...	...	...	.....	S. S. Act Sept. 28, 1850 App. 5 1 7, 1858.
C no.	496	11	3	1 70	12	9	1 70	Andrew Frau	H. B. & C. F. Putnam & F. A. Poggle.	W D	S E f'l ¼ of S E ¼ & N W ¼					
No. 2	132	8	14	1 75	8	14	1 75	J. N. Grayson Cl'k	State of Ark.	Cl'k's D.	E ½ f'l & S W ¼	.....	...	.....	.....	Forfeited tax 1869 & '70 & Pindall & Randolph.
No. 4	54	6	14	1 79	6	14	1 79	J. P. Jones C'lk	State of Ark.	" "	S ½ & N E ¼ & N W f'l ½	.....	...	.....	.....	Forfeited tax.
No. 6	577	4	1	86	2	28	87	J. S. Ross Com'r	Mrs. S. H. Murphy	Com'r's D	Fr'l Sec.	.....	...	.....	.....	Overdue tax sale.
No. 11	286	10	10	1 93	8	16	98	Jo. Evans & wife	Mrs. S. H. Murphy	Q. C.	S W ¼ f'l	.....	...	.....	.....	
No. 11	293	8	22	1 96	8	27	98	S. H. Murphy	Moore & McFerrin	W D.	All of Sec.	.....	...	.....	.....	
A. A.	134	10	29	1 90	8	15	98	State by Meyers' Com'r	Jo. Evans	Pat.	S W ¼ fr'l	.....	...	.....	.....	

Endorsed.

ARKANSAS CITY, ARK., 10/7, 1899.

We hereby certify that we have carefully examined the records in the offices of the county and circuit clerks and recorder of Desha County Ark. as to Secs. 1 & 2 T. 11 S. R. 1. E. & Secs. 35 & 36 T. 12 S. R. 1. E. as per the 4 pages within, and the within is as we believe, a correct abstract of all the conveyances or other instruments of record affecting the title to said lands, & that the title to the same is legally vested in Messrs. Moore & McFerrin.

DICKINSON & JONES, *Abstracters.*
J. W. DICKINSON.
BEN G. MEEKS, *C'lk.*

J. W. Dickinson says he believes this abstract is correct.
Subscribed & sworn to this May 5, 1902.
Filed Dec'r 20, 1905. W. P. Feild, clerk.

5—222

R. J. MC GUIRE ET AL.

65

110 MARCH 23RD, 1904.

Hon. William H. Simms, First Assistant Secretary of the Interior Department, Washington, D. C.

MY DEAR SIR: The question whether Island No. 76 in the Mississippi River belongs to the State of Mississippi or to the State of Arkansas.

The Island is in a survey made by each of these States, reported to the General Land Office, though it was sold to private persons by the United States Government through the Land Office at Little Rock.

From the information given me, but which is not conclusive this Island was originally on the Western side of the thread of the stream, though it is now east of the channel.

I would esteem it an official as well as a personal favor if you will give me all the light that you can on the subject. There may be some maps or river surveys, showing the precise position of the island originally in your department.

Your attention at your earliest convenience will be highly appreciated.

Very Sincerely Yours, FRANK JOHNSON,
Att'y Gen. of Miss.

THE STATE OF MISSISSIPPI, *Hinds County:*

I certify that the above writing is a true and correct transcript of pages 183 and 184 of the official letters of the Attorney General of Mississippi from January 11th, 1894, to June 23rd, 1894, now in my official keeping in said office at Jackson, Mississippi. This office has no official seal.

(Signed) MONROE McCLURG,
Attorney General of the State of Mississippi.

Endorsed: Filed December 15th, 1905. W. P. Feild, Clerk.

111 Refer in reply to this *e*nitial: "C"

33111-94

W. O. C. J. W. B.
J. V. W. M. A. M.
E. M. M. R. K. G.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April 6th,* 1894.

Hon. Frank Johnson, Attorney General of Miss.

SIR: Ackowledging the receipt, by Department reference, of your letter of March 23rd, 1894, in which you request to be furnished with all the light on the subject of the ownership of Island No. 76 in Mississippi River, I have to state that as shown by the records the gr-ater part of said Island was disposed of in 1847, at Helena, Arkan-

sas, by cash purchase, and the remainder was approved to the State under the Swamp Land Grant on May 7th, 1858. It was also approved to the State of Mississippi September 24th, 1852 under said grant.

I herewith enclose a copy of letter of Feb. 28, 1855, in relation to the jurisdiction of the State of Arkansas and Mississippi over the Island in question and giving facts in relation to the survey in each state.

There are no plats or maps or river surveys, showing the precise position of the island originally in this Department.

Very respectfully,

(Signed) EDW. A. BOWERS,
Assistant Commissioner.

This is the original letter written to me by Edward A. Bowers which I sent to Hon. W. W. Stone, Auditor with my opinion.

(Signed) FRANK JOHNSTON.

May 13th, 1902.

Endorsed: Filed December 15th, 1905. W. P. Feild, Clerk.

112 The following letters were introduced and read by the defendants at the final hearing of this cause.

113 1902.—77,913. A. V. F.
"C."
E. M. M.
G. E. F.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May 13th,* 1902.

I, Binger Herman, Commissioner of the General Land Office, do hereby certify that the annexed copy of letter from Governor of Mississippi, of May 3rd, 1859, (with copies of the inclosures therein), is a true and literal exemplification of the same on file in this office, and the annexed copies of office letters relative to Island No. 76 in Mississippi River, of dates as follows: February 28th, 1855, to Hon. Jacob Thompson; July 23rd, 1859, to Governor of Mississippi and June 27th, 1896, to Register and Receiver at Jackson, Mississippi are a true and literal exemplification of the record of such letters in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written..

[SEAL.] (Signed) BINGER HERMAN,
Commissioner of the General Land Office.

EXECUTIVE OFFICE,
CITY OF JACKSON, MISSISSIPPI, *May 3rd*, 1859.

Hon. Jacob Thompson, Sec. of the Interior.

DEAR SIR: Island 76 (sometimes called Bolivar Island) was confirmed to the State by the Federal Government and afterwards sold to William G. Ford. I am informed that this island is now claimed by the State of Arkansas. The enclosed letters from Major Downing and William Ford, with the certificate of the Secretary of the State, contain all the information in my possession on the subject. You are hereby requested to adjudicate the case, and to conform or sustain the title of W. Ford through the grant to this state.

Very respectfully, W. McWILLIE.

114 Ctf. of Secretary of State above referred to to W. G. Ford with letter of June 28th, 1866. Curtis.

Endorsed: Gov. W. McWillie, Jackson, Miss., May 3rd, 1859. E. 95,845. Desires a decision in relation to Bolivar Island confirmed to Mississippi by the General Government, then sold to William G. Ford, and never claimed by the State of Arkansas. Encloses letters from Major Downing, Mr. Ford and the certificate of the Secretary of State.

INTERIOR DEPARTMENT, *July 23rd*, 1859.

Received, referred to the Commissioner of the General Land Office. 7/508. R. Allan.

W. W. LESTER,
Acting Chief Clerk.

Received 11 May 59. M. Beard.
See letter of Gov. McWillie, July 23rd, 1859.
Referred K. M. Skinner, July 29/59. Allan.

MEMPHIS, TENN., *April 29th*, 1859.

Hon. Wm. McWillie, Gov. of State of Miss., Jackson, Miss.

DEAR SIR: On the 29th day of January, 1854, I purchased from the State of Mississippi and received her patent for section thirty-six and thirty-seven in Township twenty-one, Range eight West (908.58 acres) known as Island 76 as surveyed in Mississippi. The jurisdiction of the Island is claimed by Arkansas and it has been disposed of as public domain within the limits of that State. There is no evidence of a shadow of title to the State of Arkansas and the lands embraced in these sections 36 and 37 have been confirmed—seven or eight years since—as swamp lands to the State of Miss., but the State has never received or claimed a patent therefor under that confirmation. The land bureau at Washington cannot know, nor has any one the right to invoke its action save the State of Mississippi. The land was given to the State. The Governor alone can make up
115 the case by claiming a patent to the State of Mississippi for the island upon such evidence as he is possessed of. I enclose

a statement of Maj. Downing as evidence of the claim of the State of Mississippi which with whatsoever other evidence you may be possessed you will do me the favor to have forwarded to the Department at Washington in your application in behalf of the State.

With this brief prelude, allow me to trespass upon your attention in so much as to ask your early official interposition.

With high regard, respectfully yours,

W. G. FORD.

JACKSON, *Jan'y* 18, 1850.

William G. Ford, Esq.,

DEAR SIR: In answer to your inquiry in relation to Island No. 76 or Bolivar Island as it is often called; its proximity to the eastern shore of the Miss. River at the time when it was surveyed by the United States Deputy Surveyor and before and since that time I have to say that I have for over thirty years been traveling up and down the Miss. River. Island 76 was surveyed I think in 1830 or 31 as a part of township 21 Range 8 West at that time and for some years after the Island Chute as it was called was quite narrow. I think that about opposit- the middle of the Island the chute was not over one hundred yards wide. I have been told that deer had been and could ea-ily be shot from the eastern shore of the river upon the Island and from my own observation I have no doubt but they could for at that time I never heard of a steamboat going up or down on the east side of the island. The main River then passed on the west side of the Island.

I think it was in 1835 I spent some time in T. 21 R. 8 W. examining the land in that township. The east bank of the river opposite the Island had not fallen in much. The Island Chute at that time was quite narrow.

Respectfully A. DOWNING.

116 GENERAL LAND OFFICE, *February* 28, 1855.

Hon. Jacob Thompson, Washington, D. C.

SIR: As regards Island 76 in the Mississippi River to which you called my attention yesterday in conversation in connection with the question of jurisdiction over the same by the States of Mississippi and Arkansas, I have to state:

That it appears on referring to the plats in this office Island No. 76 *has* surveyed by the Surveyor General of Mississippi as a part of Township 21 North of Range 8 West of the Choctaw Meridian and Base line returned with his certificate of approval bearing date the — October, 1836, and that the Island No. 76 was surveyed under direction of Wm. Pelham, Surveyor General of Arkansas in February, 1846, as parts of townships 11 and 12 South of Range 1 East of the 5th Principal Meridian in that State and certificate to this office 23d December 1846. The Island does not appear to have been offered at public sale in either State.

I am of the opinion from the inspection of the plats that the Island in question belongs to the jurisdiction of Mississippi and

should not have been returned and surveyed as lying in the State of Arkansas. Still I must qualify this opinion by stating that if it should be found by measurements and evidence taken on the spot that the middle of the main channel of the river as it existed in the year 1817, the date of the Act of admission of the State of Mississippi, prescribed her boundaries was situated East of the Island and remained unchanged until the year 1836 the date of the Act of admission of Arkansas as a State, then the Island undoubtedly belongs to the latter. But if in 1817 the middle of the main channel was East of the Island, and in 1836, by changes in the bed of the River was West of the Island, then it will occupy the peculiar position of not being within the limits of either State, according to the boundaries prescribed by the Acts of admission.

117 I am very respectfully
Your obedient servant

JOHN WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 23, 1859.

His Excellency Wm. McWillie, Governor of Mississippi, Jackson, Miss.

SIR: Your letter of 3rd May, relating to Island No. 76 in the Mississippi selected by the State of Mississippi under the Swamp Grant of September 28, 1850, has been referred to this office by the Secretary of the Interior.

This Island is claimed by William G. Ford, Esq., as a purchaser from the State, and you desire that his title thereto may be sustained by the confirmation of the Island to the State. As it appears on reference to the plats in this office, this Island was surveyed by the Surveyor General of Mississippi as a part of T. 21 N., R. 8 W., Choctaw Meridian, Mississippi, and returned with his certificate of approval under date of October, 1836. It also appears that under direction of the Surveyor General of Arkansas, this Island was surveyed in February 1846 as a part of T. 11 and 12 S., R. 1 E., Helena District, Arkansas, and returned with certificate of approval dated Dec. 23, 1846.

A proclamation for the sale of the lands in the Helena district including this Island was made and the tracts on said Island were duly offered for sale on the 12th day of July 1847. Subsequently greater portion of the tracts were entered, and patents were issued to the purchasers prior to the 28 Sept., 1850, the date of the Swamp Grant. The Island as situated within the limits of the *limits of the* State of Mississippi has never been proclaimed for sale.

The question of State jurisdiction over this island was presented to my predecessor, and he in a communication of the 28th

118 Feb. 1855, says:

I am of the opinion from the inspection of the plats that the island in question belongs to the jurisdiction of Mississippi, and

should not have been surveyed and returned as lying in the State of Arkansas. Still I must qualify this opinion by stating that if it should be found by measurement and evidence taken on the spot that the middle of the main channel of the river as it existed in the year 1817, the date of the act of admission of the State of Mississippi prescribing her boundaries was situated East of the Island and remained unchanged until the year 1836, the date of the Act of admission of Arkansas as a State then the Island undoubtedly belongs to the latter.

Under this view of the case if satisfactory proof shall be presented to this office that the middle of the main channel of the River in 1817 was on the West of said Island the jurisdiction thereof properly belongs to Mississippi, and in that event the title of the lands from the Government of the United States having vested in the purchasers as within the State of Arkansas, I am of the opinion that the State of Mississippi in virtue of her right under the Swamp Grant of 1850, should receive from the General Government an indemnity in kind equivalent to that received from the purchasers.

With your letter I find the statement of A. Downing, dated 18 Jan'y, 1859, going to show that Island 76 belongs to the *Mississippi* side and falls within our limits as defined by the treaty of 1783. Mr. Downing was formerly Surveyor General of Mississippi and great reliance is to be placed on his statement. If therefore you will add to it his affidavit with the testimony of any other disinterested witness so as to bring the matter within the qualifications of my predecessor's opinion, and stating that the Island is of a swampy character. Such is the additional testimony contemplated by Sec'y McClellans's decision as required by the 2nd Section of the Act of 2nd March, 1855, notwithstanding the Island has been reported as swamp, the testimony will then be fully of equal grade to that required in analagous cases, and thereupon an account will be opened between the State and the United States with a view to her reimbursement by Treasury Warrant to the amount of cash which the United States by sale have received therefrom, and in case of the location of any part of the Island by warrants or scrip a certificate to that amount, authorizing the selection of other lands subject to entry at $1.25 per acre will be issued, such being the mode on indemnity prescribed by the 2nd Section of the Act of 2nd March, 1855, in cases where the lands taken by the swamp grant have been disposed of by the United States.

With great respect, Your ob't serv't

THOS. A. HENDRICKS, *Comm'r.*

Address only the Commissioner of the General Land Office.

119 K. S. W. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 27, 1896.

E. M.
W. O. C.
J. V. W.

Register and Receiver U. S. Land Office, Jackson, Miss.

SIRS: The plat of survey of T. 21 N., R. 8 W., Choctaw Meridian approved in 1836, shows Island No. 76 in the Mississippi River, to

be designated as Sections 36 and 37, containing 674.20 and 234.38 acres respectively, but such sections or lots are not subdivided into smaller tracts.

Island No. 76 was also surveyed under the direction of the U. S. Surveyor General, for the District of Arkansas, and *and* the plat of such survey was approved October 23rd, 1846. The plat of such survey shows the main channel of the river to be West of the Island and consequently the Island is in Mississippi. The plat approved October 23, 1846 shows Island No. 76 to be in Secs. 35 and 36, T. 11 S., R. 1 E., and in Secs. 1 and 2, T. 12 S., R. 1 E., 5th Principal Meridian. The lands on said Island disclosed by the Arkansas survey, were all disposed of in 1847, with the exception of the N. E. fractional quarter of Sec. 35, T. 11 S., R. 1 E., containing 35.92 acres, which tracts were approved to the State of Arkansas, as swamp land, January 7, 1858.

The lands on said Island as shown by the survey of 1836 in T. 21 N., R. 8 W., were selected by the State of Mississippi as swamp land, June 12, 1852, List No. 1, and approved as such September 24, 1852, List No. 1 Grenada series. No part of the Island has been patented to either state as swamp land.

It is not necessary to consider the question of the irregularity of either survey. It is sufficient to state that the United States disposed of all of the land except 51 acres prior to Sept. 28, 1850, and consequently the tracts so disposed of were not granted by the swamp land Act of that date.

It is the intention of this office to submit the matter
120 & 121 to the Secretary of the Interior, with the recommendation that approval of so much of said approved swamp land list No. 1, Grenada Series, as related to the Island in question be revoked. At the same time a new list, containing the 51 acres referred to: (N. E. Fractional quarter Sec. 35, T. 11 S., R. 1 E., and S. W. fractional quarter Sec. 2, T. 12 S., R. 1 E., 5th P. M.) will be submitted for approval to the State of Mississippi.

You will advise the Governor of the condition of the case and of the proposed action and allow him sixty days in which to object thereto, if he desires so to do, and in due time you will make full report in the premises to this office.

Very respectfully,

E. F. BEST,
Acting Commissioner.

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

* * * * * * *

122 Which report of the Receiver is as follows:

In the United States Circuit Court, Western Division of the Eastern District of Arkansas.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

123 Comes J. S. Ross, the Receiver heretofore appointed herein, and begs leave to submit this his report and statement of account showing his action in pursuance of the order of this Honorable Court made and entered on January 29th, 1900, in reference to cutting the girdled timber on the land in controversy in this cause:

That on March 13th, 1900, I made a contract with O. L. Sanders for the cutting of said girdled timber, there being about twenty-five hundred trees on said land, which contract is in words and figures as follows:

"ARKANSAS CITY, ARK., *March 13th*, 1900.

This agreement made this 13th day of March, 1900, between J. S. Ross, Receiver, party of the first part, and O. L. Sanders, party of the second part:

Witnesseth, said O. L. Sanders party of the second part, agrees to cut and float and deliver all cotton wood timber now belted on Island 76, County of Desha and State of Arkansas. Said timber to be delivered at Arkansas City at $3.00 per thousand, Scribner and Dale Rule.

(Signed) J. S. ROSS. [SEAL.]
O. L. SANDERS. [SEAL.]

Witness:
F. C. WEISEL.

And at the same time I sold said timber to Moore and McFerrin at $4.10 per M. they to receive the timber according to the measurements made for said Sanders they to pay the said Sanders as the said timber was delivered and the balance to this Receiver. A detailed statement of my said actions under said order and contract is as follows:

Date.	No. of logs.	No. of feet.	Paid Sanders.	Balance to receiver.
6/22/1900	674	150,836	$452.50	$165.90 V. 1
7/19/1900	599	117,582	352.73	129.33 V. 2
8/6/1900	634	118,437	355.30	130.27 V. 3
9/10/1900	1373	272,288	816.86	299.50 V. 4
9/29/1900	511	100,793	302.37	110.88 V. 5
10/17/1900	1009	186,530	559.05	204.98 V. 6
11/15/1900	725	111,108	333.32	122.22 V. 7
7/22/1901	1920	278,377	835.13	306.20 V. 8
1/15/1902	4586	695,573	2851.85	765.13 V. 9

The timber shown by voucher nine was scaled up before delivery at Arkansas City, part still being in the woods. Sanders having failed in his contract, Moore and McFerrin, the purchasers, agreed to take the timber (Logs) where it lay at the net price $1.10 per M and deliver it at Arkansas City at their expense. This makes a total of $2234.41 net proceeds from the sale of said logs.

In connection with the sale of said logs I uncurred the following personal expense:

124	2/24/1900. Trip on boat to Island and return....	$4.00
	2/25/1900. Trip on boat to Island and return....	4.00
	3/10/1900. Trip on boat to Island and return.....	4.00
	6/2/1900. Trip on boat to Island and return.....	4.00
	8/5/1900. Ferriage across river $1.00 horse hire $2.00...	3.00
	2/4/1900. Ferriage across river 1.00 horse hire 2.50...	3.50
	9/20/1901. Trip on boat to Island and return.....	4.00
	1/8/1902. Ferriage on boat 1.00 carriage 4.00.....	5.00
	1/8/1902. Amount paid for labor and help to scale up balance of timber lying in woods.....	14.00
	Expense account Little Rock, filing Report.....	9.30
	Making total of.....	$54.80

so expended and paid out. For these amounts I was unable to take vouchers at the time and ask that said amount be allowed.

This leaves in my hands the sum of $2179.61, which amount I have paid into the Registry of your Honorable Court as heretofore directed.

Having submitted a full report of my Receivership, I ask that my account be closed with such reasonable allowance as your Honorable Court may deem just and proper.

All of which is respectfully submitted.

(Signed) J. S. ROSS, *Receiver.*

October 14th, 1902.

Endorsed: Filed October 24th, 1902. W. P. Feild, Clerk.

* * * * * * *

125 And on December 30th, 1902, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the complainants by Rose, Hemingway and Rose, Esqs., their solicitors and come the defendants by J. M. Moore, Esq., their solicitor, and this cause having heretofore been set down for final hearing on December 31st, 1902, and it being shown to the Court

that said cause cannot be tried on said day and the parties agreeing thereto—

It is now ordered that said cause be and the same is set down for hearing for February 18th, 1903.

And on February 20th, 1903, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

It is ordered by the Court, by agreement of parties that this cause be set down for final hearing on March 24th, 1903.

126 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remenbered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 3rd day of April Anno Domini, One Thousand Nine Hundred and five at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber, U. S. District Judge presiding and holding said Court, the following proceedings were had, to-wit: on October 14th, 1905.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Comes U. M. Rose, in his own proper person and on his motion it is ordered by the Court that leave be given him to withdraw the files in the above entitled cause from the Clerk's Office upon his executing to the Clerk a receipt therefor.

127 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it Remenbered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 16th day of October Anno Domin, One Thousand Nine Hundred and five at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable Jacob Treber, U. S. District Judge presiding and holding said Court, the fdlowing proceedings were had, to-wit: on November 17th, 1905.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Ordered, on motion of plaintiffs, that they have leave to retake the deposition of Charles Le. Vassuer as to the width and depth of the channel of the River at Island 76 on the East side thereof.

(Signed) JACOB TRIEBER, *Judge.*

And on November 24th, 1905 the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Comes U. M. Rose, Esq., and files herein the written agreement of parties to this cause which is as follows:

"United States Circuit Court, Eastern District of Arkansas, Western Division.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Agreed by Counsel in this cause:

1st. An abstract of title duly filed by the manager of any
128 abstract office for the making of abstracts of title to lands in controversy may be received in evidence on the hearing, unless one or the other of the parties shall object to a particular conveyance and shall require its production by notice given twenty days before the trial of this cause. Either party, however, desiring to use such abstract of title shall furnish a copy of same to the opposite party twenty-five days before said trial.

2nd. Certified copies of letters that pass between the United States, the Commissioner of the General Land Office and the Attorney General of Mississippi may be read in evidence in this cause without objection by either party, except as to the relevancy and competency and either party may object to said letters on the above grounds alone this agreement being merely intended to waive the mere manner of trying to introduce them as evidence.

(Signed) CHAS. SCOTT, WOODS AND SCOTT,
Solicitors for Defendants.
MYERS AND BANKS,
Of Counsel for Complainants.

And on December 7th, 1905 the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the complainants by Myers and Banks, Esqs., their solicitors and file herein their exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 to the bill and also their Exhibit C to deposition of Chas. Le. Vassuer.
Which Exhibits to the bill are as follows:

(For Exhibits see page- 18-41 this Record.)

And on December 15th, 1905 the following proceedings were had to-wit:

129 1304.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business as Moore and McFerrin,
vs.
R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose, Esqs., their solicitors and comes the defendants by J. M. Moore and A. Y. Scott, Esqs., their solicitors, and this cause now coming on for final hearing upon the bill, amendments thereto, answer, amendments thereto, replications, and all other pleadings, proofs, exhibits and depositions, thereupon the Court proceeds to hear the evidence on the part of the complainants as well as on the part of the defendants, and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on December 16th, 1905 the following proceedings were had to-wit:

1304.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business as Moore and McFerrin,
vs.
R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose, Esqs., their solicitors and come the defendants by J. M. Moore and A. Y. Scott, Esqs., their solicitors, and the hearing

hereof not being concluded on yeasterday the same is now resumed, and said complainants by their said solicitors file herein their transcript from Justice Hinds, J. P. of Bolivar County, Mississippi, of unlawful detainer, and the hearing hereof not being concluded the same is continued until Monday Morning at half past nine o'clock. Which transcript is as follows:

130 *Index.*

R. J. McGUIRE ET AL.
vs.
J. W. SHARP.

Unlawful Detainer.

1. Caption from Justice's Docket page 65.
1. Affidavit.
2. Warrant and Return.
3. & 4. Petition for Removal to Circuit Court of the United States for the Western Division of the Southern District of Mississippi.
5. Appeal Bond.
6. Clerk Certificate.
7. Judge and Clerk's Certificate.

131 Proceedings had before, S. A. Hinds, S. M. Seaton and Wm. Arnold Justic-s of the County of Bolivar, and State of Mississippi Organized as a Court of Unlawful Entry and Detainer Under Chapter 142 of the Code of 1892, in the case of R. J. McGuire *et als. vs.* J. W. Sharp as follows.

The following transcript in said suit appears among the papers on file now in my office, in words and figures as follows to wit:

Affidavit.

STATE OF MISSISSIPPI, *County of Bolivar, To wit:*

R. J. McGuire, M. Y. Scott, M. M. Scott, E. H. Woods, E. M. Scott, W. A. Yerger and W. A. Fitzgerald of said county, by their Attorney O. G. McGuire, complains that J. W. Sharp unlawfully withholds from them possession of certain land, to wit:

Lots 1. 2. 3. 4. 5. 6. 7. & 8 Section 36, T. 21, R. 8, W. and Lots 1. 2. & 3 Section 37, T. 21, R. 8 West lying and being in the said county, whereof they pray the possession.

O. G. McGUIRE,
Att'y for the Pl't'ffs.

STATE OF MISSISSIPPI, *County of Bolivar, To wit:*

This day the above named O. G. McGuire Attorney, R. J. McGuire, E. H. Woods, W. S. Woods, M. Y. Scott, E. M. Scott, W. A. Verger and W. H. Fitzgerald made oath before me, a justice of the peace for said County, that the allegations of the above complaint

to his own knowledge and belief and to the knowledge and belief of the above plaintiffs are correct and true.

O. G. McGUIRE, *Att'y.*

Giver under my hand this 23rd day of October A. D. 1899.

S. A. HINDS, *J. P.*

Endorsed: E. H. Woods *et al.* Filed October 23rd 1899. S. A. Hinds J. P.

132 The State of Mississippi to the the Sheriff of Bolivar County:

Whereas R. J. McGuire, E. H. Woods, E. S. Woods, M. Y. Scott, M. M. Scott, W. A. Yerger and W. H. Fitzgerald have made complaint, on oath before me, a Justice of the Peace for the said County, that J. W. Sharp unlawfully withholds from their possession of certain land to wit: Lots 1. 2. 3. 4. 5. 6. 7. & 8 Section 36, Township 21, Range 8 West, and Lots 1. 2. & 3. section 37, Township 21, Range 8 West lying and being in the said County, and hath prayed the possession thereof this is therefore to command you to summons the said J. W. Sharp to appear at the Court House at Rosedale, Mississippi on the 28th day of October A. D. 1899, before the Justices of the County, to answer to the complaint and also to require you to give notice of this warrant to two other justices of the peace of the County, and to request their attention at the time and place named, and have then there this warrant.

Witness my hand, this 23rd day of October, 1899.

S. A. HINDS, *J. P.*

Whereupon the following Endorsement Appears in words and figures to wit:

I hereby appoint H. B. Wilson Special Deputy Sheriff to serve the within on J. W. Sharp.

R. M. EDWARDS, *Sh'ff.*
L. E. EDWARDS, *D. S.*

Further executed personally on the within named Defendant J. W. Sharp by reading said writ to him and by handing the said J. W. Sharp a true copy of said writ.

This 23rd day of Oct., 1899.

R. M. EDWARDS, *Sh'ff,*
By H. B. WILSON,
Special Deputy Sheriff.

133 STATE OF MISSISSIPPI, *County of Bolivar:*

In the Unlawful Detainer Court Before S. A. Hinds, a Justice of the Peace for the County and State Aforesaid.

R. J. McGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, W. A. YERGER and W. H. FITZGERALD, Plaintiffs,

vs.

J. W. SHARP, Defendant.

The Petition of the Above Named Defendant J. W. Sharp, for Removal to the Federal Court of the Above Styled Cause.

Petitioner, J. W. Sharp, defendant to the above styled cause, respectfully show- to the Court, and State- as follows, to wit:

That the above suit was begun against your petitioners as defendants on the 23rd day of October, 1899 before the said S. A. Hinds, Justice of the Peace, by an action of unlawful detainer for the possession of the following described tracts or parcels of land, alleged in the original petition in said suit to be in the County of Bolivar, and State of Mississippi, to wit:

Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Section 36, Township 21, Range 8 West, and

Lots 1, 2 and 3 in Section 37, Township 21, Range 8 West. Petitioners say that the above described Lands are of great value, to wit, more than Five thousand Dollars ($5,000) and at the time said suit was begun, and, at the present time, your petitioners, the defendants to said unlawful detainer suit, were and are non-residents of the State of Mississippi but are *bona fide* residents of the State of Arkansas, the said J. W. Sharp being a resident of Landbeville in the State of Arkansas, being a *bona fide* citizens of the State of Arkansas.

That the matter in dispute in said suit, and for which said suit is brought, exceeds the sum of Five thousand Dollars ($5,000) exclusive of costs, and the said defendants Petitioners herein, herewith file their bond, with good and sufficient sureties, for their en-

134 tering into the Circuit Court of the United States for the Western Divisision of the Southern District of the State of Mississippi, wherein said suit is pending on the first day of the next session of said Court, a copy of the record in said suit, and also for his appearing in said Circuit Court to answer the said suit, and for paying all costs that may be awarded by the said Circuit Court — shall hold that said suit was wrongfully or improperly removed thereto, as provided by the Statutes of the United States.

Wherefore, The said defendants, the petitioners herein, pray this Honorable Court that said bond may be approved, and said suit be removed into the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, and that this Court proceed no further in the premises.

J. W. SHARP.

STATE OF MISSISSIPPI, *County of Bolivar:*

J. W. Sharp, being sworn, say that they are Defendants in the above entitled action, and have read the foregoing petition, subscribed by them, and know the contents thereof, and the same is true of their own knowledge.

Sworn to before me this 28th day of October, A. D. 1899.

W. A. STONE, *Clk.*

[SEAL.] W. A. SHELBY, *D. C.*

Endorsed: Filed Oct. 28th/99. S. A. Hinds, J. P.

Whereupon the following bond was filed in words and figures as follows to wit:

Know all men by these present, That we J. W. Sharp of Nedford, in the State of Arkansas, as principal and The Valley Bank and D. Reinach as sureties, are jointly and severally held and firmly bound unto R. J. McGuire, E. H. Woods, E. S. Woods, M. Y. Scott, M. M. Scott, E. M. Scott, W. A. Yerger and W. H. Fitzgerald, in
135 the penal sum of Five hundred Dollars (500.00), for which amount, well and truly to be paid, we bind ourselves firmly by these presents

The condition of this obligation is such that if the said J. W. Sharp defendants in a suit now pending before the Unlawful Detainer Court of Bolivar County, and State of Mississippi composed of S. A. Hinds, Justice of the Peace and two other Justices of the Peace of said County shall, on the first day of next session, or term of the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, enter a copy of record in said suit, and shall enter the appearance of said J. W. Sharp in said Circuit Court of the United States, and shall enter special bail in the cause, if special bail should be originally required, and pay all costs that may be awarded against them by said Circuit Court, if said Circuit Court shall hold that said suit was unlawfully or improperly removed from the State Court, then this obligation to be void, otherwise to remain in full force and effect.

Witness our signatures this the 28th day of October, 1899.

J. W. SHARP.
VALLEY BANK,
By D. REINACH, *Prest.*
D. REINACH.

Approved this the 28th day of Oct. 1899.

S. A. HINDS, *J. P.*

Endorsed: Oct. 28th/99. S. A. Hinds, J. P.

STATE OF MISSISSIPPI,
County of Bolivar (in the First Judicial District).

I, C. T. Christmas, Clerk of the Circuit Court in and for said First Judicial District of said County, do hereby Certify that the foregoing

Five pages contain a true and correct transcript of the original papers, and of the proceedings had as the same appear on file and of record in a suit lately pending in one of the Justice's Court wherein S. A. Hinds was the Justice of the Peace and styled R. J. McGuire *et al. vs.* J. W. Sharp, the record of the above cause is now a
136 part of the records in my office.

In witness I have hereunto set my hand and seal this the 5th day of December, A. D. 1905.

C. T. CHRISTMAS,
Circuit Clerk.
JOHN L. GILL, *D. Clk.*

137 THE STATE OF MISSISSIPPI, *Bolivar County:*

I, A. McC. Kimbrough, Judge of the Circuit Court of said County, being the sole presiding Judge of the 4th Judicial District of the said State, which said District includes the said County of Bolivar, do certify that C. T. Christmas, whose name, signed by John L. Gill, Deputy Circuit Clerk, appears to the annexed and foregoing certificate and attestation, was at the date thereof, and now is the Clerk of said Court, duly elected and qualified, and that said John L. Gill is the duly appointed, qualified and acting Deputy Circuit Clerk of said County, and that said certificate and attestation are in due form of law, and by the proper officer, and that the seal thereto attached is the seal of said Circuit Court, and that said Court is a Court of Record.

Given under my hand, at Greenville, Mississippi, this 13th day of December, A. D. 1905.

A. McC. KIMBROUGH,
Judge 4th Judicial District of Mississippi.

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, the undersigned Clerk of the Circuit Court of the County of Bolivar, in said State, (said Court being a Court of record, and having an official seal), do hereby certify that A. McC. Kimbrough, whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the sole presiding Judge of the 4th Circuit Court, or Judicial District, of said State, which said *District includes* said County of Bolivar, and that A. McC. Kimbrough, Judge as aforesaid, is now, and was at the date of said attestation duly commissioned, qualified and acting as such.

Given under my hand and seal of office, at Rosedale, Mississippi, this the 14th day of December, A. D., 1905.

C. T. CHRISTMAS, *Clerk,*
By JOHN L. GILL,
Deputy Clerk.

Endorsed: Filed Dec. 16th, 1905. W. P. Feild, Clerk.

138 And on December 18th, 1905, the following proceedings were had to-wit:

1304.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business as Moore and McFerrin,

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose, Esqs., their solicitors, and come the defendants by J. M. Moore and A. Y. Scott, Esqs., their solicitors, and the hearing hereof not being concluded on Saturday the same is now resumed; and the complainants by their said solicitors file herein their exceptions to testimony, and said complainants and defendants file herein their agreement as to jurisdiction, and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

Which exceptions of the complainants to the testimony are as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

1304.

MOORE and MCFERRIN

vs.

R. J. MCGUIRE ET AL.

Exceptions of Complainants to Testimony.

First: Complainants except to a letter dated April 29th, 1859 from W. G. Ford to Hon. William McWillie, as incompetent.

Second: Complainants also except to the letter of date January 8th, 1859, from A. Downing to W. G. Ford, as incompetent, particularly because it is a correspondence between private individuals, and not in any official character, not sworn to nor written in any official character or capacity.

And further because the introduction of it is not in accordance with agreement of counsel.

Third: Complainants also except to letter of date February 28th, 1855, from John Wilson, Commissioner to Jacob Thompson because incompetent and being written to a private citizen and also

139 because the same is not admissible under agreement of counsel.

(Signed) ROSE, HEMINGWAY AND ROSE,
MYERS AND BANKS,
Solicitors for Complainants.

Endorsed: Filed December 18th, 1905. W. P. Feild, Clerk.

Which Agreement as to Jurisdiction is as follows:

(This agreement was not written up. W. P. Feild, Clerk.) (See Folio 141 of this Record.)

140 And on December 19th, 1905, the following proceedings were had to-wit:

1304.

WILLIAM MOORE and J. S. McFERRIN, Partners, Doing Business under the Firm Name of Moore and McFerrin,

vs.

R. J. McGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose, Esqs., their solicitors and come the defendants by A. Y. Scott and J. M. Moore, Esqs., their solicitors and the hearing hereof not being concluded on yesterday the same is now resumed, and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on December 20th, 1905, the following proceedings were had to-wit:

1304.

WILLIAM MOORE and J. S. McFERRIN, Partners, Doing Business as Moore and McFerrin,

vs.

R. J. McGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose, Esqs., their solicitors and come the defendants by J. M. Moore and A. Y. Scott, Esqs., their solicitors, and the hearing hereof not being concluded on yesterday the same is now resumed; and the defendants by their said solicitors by leave of court file herein their waiver of jurisdiction herein, and the compl inants by their said solicitors by leave of court file herein their request for declarations of law; thereupon the Court proceeds to the hearing of this cause, and the Court having heard all the evidence and arguments of counsel, and not being now well and sufficiently advised in the premises takes time to consider of its own judgment

141 herein.

Which waiver of jurisdiction of the defendants is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

The defendants in open Court waive any question as to the jurisdiction of this Court sitting as a Court of Equity in the hearing of this cause.

(Signed) D. E. MYERS,
U. M. ROSE,
For Complainants.
A. Y. SCOTT,
J. M. MOORE,
For Defendants.

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

Which request for declarations of law by the complainants is as follows:

1. The lands having been surveyed and patented as lying within the limits of the State of Arkansas, this fact raises a strong presumption that the survey and patent were legally and properly made and that they are therefore valid.

2. The boundary of the State of Mississippi does not extend beyond the high or low water mark, and does not include the lands in controversy.

3. If the said lands were at the time of the admission of Mississippi west of the middle of the main navigable channel of the Mississippi River they never formed any portion of the lands of the territory of the State of Mississippi.

4. If the line between Arkansas and Mississippi was east of the eastern boundary of Island 76 at the time of the admission of Mississippi into the Union, it was not changed when the main current afterwards shifted to the other side of the Island.

5. The evidence shows that the long acquiescence of the State of Mississippi in the boundary dividing its territory from that of Arkansas as shown by the official survey of the latter state, and the patent issued upon it, establish the fact that the plaintiffs have the better title to the lands in controversy.

142 6. The lands having been surveyed and patented as being within the State of Arkansas, the presumption arises, in the absence of other evidence, that from the time they were regularly assessed for taxation, *and that* all taxes legally falling due on them were collected as in other similar cases.

7. The tax sale under which the defendants claim is invalid be-

cause the lands are not described according to the surveys under which they were patented.

8. If the main navigable channel of the river was east of the island at the time of the admission of Arkansas into the Union, the said channel still continues to be the boundary between that State and the State of Mississippi.

9. That the fact that officers of the State of Mississippi may have asserted or suggested that Island 76 belonged to that State or that the patent to said lands was illegally issued, without any definite action on the part of the State to assert any claim to the Island in the Courts or some other proper tribunal, cannot prevent the application of the principle of acquiescence in the boundary as indicated by the official survey and patent. The Courts having been at all time open to the State of Mississippi. The failure of the State for the long period shown by the evidence to claim said land by direct and affirmative action constitutes such laches as deprives its claim of any validity.

10. The Land Officers of the United States for the Helena District had no authority to sell lands lying in Mississippi; and they did not, as far as shown, attempt to make any such illegal sale.

11. The tax sale under which the defendants claim is void because, (1) The officers of Bolivar County, Mississippi, had no authority to assess said land for taxation. (2) Because said lands did not lie within the limits of Bolivar County and (3) Because it had been previously adjudicated by a competent tribunal of the State of Mississippi that said lands formed a part of the territory of the State of Arkansas, which adjudication had never been reversed, modified or annulled, but remained in full force.

12. The tax sale under which the defendants claim is void because the lands are not described in the assessment, sale and
143 conveyance under which they claim in such manner as to show that they are the same lands described in the bill of complaint and said description is not made in conformity with law.

13. Even admitting that the lands in controversy have been within the boundaries of the State of Mississippi ever since the admission of that State into the Union down to the present time, then, and in that case, there is nothing to show that the State of Mississippi ever acquired any title to the lands from the United States; and the defendants can have no better claim than that of the State of Mississippi. If the lands in the meantime belonged to the United States they were not liable to taxation under the authority of that State, and the title under which defendants claim is void.

(Signed) D. E. MYERS AND
U. M. ROSE,
For Plaintiffs.

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

And on January 10th, 1906 the following proceedings were had to-wit:

1304.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business as Moore and McFerrin,

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, E. M. SCOTT, M. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose Esqs., their solicitors and come the defendants by J. M. Moore and A. Y. Scott, Esqs., their solicitors and this cause having been submitted at a previous day of this term and the Court being now well and sufficiently advised as to what decree to render herein, doth find that the land in controversy is situated in the State of Mississippi and is not within the jurisdiction of this Court.

It is accordingly ordered, adjudged and decreed that this cause be dismissed for want of jurisdiction. It is further ordered that the money in the Registry of the Court to the credit of this cause
144 be paid over to the defendants, but that execution of this part of the decree be stayed for sixty days.

(Signed) JACOB TRIEBER, *Judge.*

And on January 11th, 1906 the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN

vs.

R. J. MCGUIRE ET AL.

On this day is presented and filed the certificate of Honorable Jacob Trieber, United States District Judge for the Eastern District of Arkansas, as to jurisdiction of this cause.

Which certificate is as follows:

In the Circuit Court of the United States for the Western Division of the Eastern District of Ark.

MOORE and MCFERRIN

vs.

R. J. MCGUIRE ET AL.

I, Jacob Trieber, United States District Judge for the Eastern District of Arkansas, do hereby certify that at the hearing of the above entitled cause I was the sole presiding Judge, none of the other Judges authorized by law to preside over said Court being present; and I further certify that the sole question upon which said cause was finally determined and by the Court dismissed was that the Court was without jurisdiction for the reason that the lands in

controversy are lying in the State of Mississippi, and no other question than that of jurisdiction was passed upon or determined by the Court.

Witness my hand as Judge as aforesaid this 11th day of January, 1906.

(Signed) JACOB TRIEBER,
U. S. District Judge.

Endorsed: Filed January 11th, 1906. W. P. Feild, Clerk.

145 The following opinion of the Court was delivered in the case.

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

MOORE & MCFERRIN
vs.
R. J. MCGUIRE ET AL.

The complainants seek by this bill to quiet their title to a tract of land constituting an island in the Mississippi River, now known as Island No. 76.

The material allegations in the original bill and amendment thereto are that the complainants, citizens of the State of Illinois, are the owners and in possession of the lands in controversy, which are situated in the County of Desha and State of Arkansas. They derain their title to all of the lands except 51 acres as follows:

Certificates of purchase and patents from the United States government, issued in July, 1847, and at various times thereafter during the same year, showing purchases and entries at the United States Land Office in Helena, Arkansas, the lands being described as being in fractional Sections 35 and 36, Township 11 South of the Base Line, Range 1 East of the Fifth Principal Meridian, and fractional Sections 1 and 2, in Township 15 South of the Base Line, Range 1 East of the Fifth Principal Meridian. That afterwards said lands having been duly assessed by the proper officers of the State of Arkansas for taxes were forfeited to the State for the non-payment thereof. While thus held by the State, it instituted an action in equity on the chancery side of the Circuit Court of Desha County, State of Arkansas, under the provisions of the statutes of that
146 State then in force, to determine whether the forfeiture of those lands to the State of Arkansas was valid, and if not, to ascertain the taxes due thereon to the State and County, declare them a lien upon said lands, and if not paid by a time to be designated by the court, that they be sold for the taxes thus found by the court to be due and declared a lien thereon. That on October 11, 1883, a decree was rendered by said court setting aside the forfeitures to the State, finding the amount of taxes due on the lands and declaring them to be a lien, and if not paid within the time designated by the decree, that they be sold by the special commissioner appointed by the court for that purpose. The moneys decreed

to be due and declared to be a lien on the lands not having been paid, they were sold in conformity with the orders of the court, by the special commissioner appointed for that purpose, and purchased by Sallie H. Murphy, to whom, after confirmation of the sale by the court and the expiration of the time within which the owners had, under the law, the right to redeem, a proper deed of conveyance was executed; and complainants now claim title by conveyance from the said Sallie H. Mur*hpy*, made on August 22, 1898, and ever since which time they allege they have been in possession thereof.

As to the remaining 51 acres of the island not included in the sales made by the United States when the other lands were sold in 1847, complainants derain their title as follows:

A patent from the United States to the State of Arkansas under the Swamp Land Grant of 1850, which patent was executed in 1858, the lands having been selected by the State of Arkansas as
147 swamp and overflowed lands; subsequent conveyances by the State of Arkansas to John Evans, under whom complainants claim title by *mesne* conveyances fully set out in the bill.

It is then charged that the island is in the Mississippi River, lying in front of portions of Bolivar County, State of Mississippi, and Desha County, State of Arkansas; that ever since the sales made by the government and the conveyance by the State of Arkansas, the lands were assessed and subjected to State and County taxes in Desha County, Arkansas.

It is further charged that by the Act of Congress of 1817, admitting the State of Mississippi into the Union, the western boundary of that State was fixed on the eastern bank of the Mississippi River, which has never been changed by any act of Congress, and that the said east bank of the Mississippi River is still the western boundary of that State; that in 1836 the legislature of that State, in establishing the County of Bolivar, fixed the boundary line on the west as "to the Mississippi River; thence up the Mississippi River."

It is also charged that at the time of the admission of the State of Arkansas into the Union in 1836, and at the date of the survey of the public lands in said State by the Surveyor General of the United States for said State the main channel of the Mississippi River was east of this island, and therefore the island became a part of the territory of said State, although since then the main channel of the River has changed, first to one side and then to the other.

That notwithstanding these facts, the complainants learned in 1899 that the State of Mississippi claimed ownership of these
148 lands by reason of forfeitures for non-payment of the state and county taxes assessed and levied by the authorities of Bolivar County, Mississippi, and that under such claim the State sold them to the defendants, citizens of Mississippi, who now claim title thereto. That neither the State of Mississippi nor the County of Bolivar made any claim that said island was in that State until in 1882 after changes had been made in the main channel of the Mississippi River. That in 1892 the State of Mississippi sold the island, which it claimed to own by reason of a forfeiture for the non-payment of taxes, to Curry & Hall, but that in 1893 or 1894, upon the applica-

tion of said Curry & Hall to the Auditor of State, a board authorized by the laws of the State of Mississippi to determine those questions, decided that those lands were situated in the State of Arkansas and not subject to taxation in the State of Mississippi, and for this reason caused the money paid by Curry & Hall to the State for the purchase of those lands to be refunded to them out of the State treasury, which was done. That notwithstanding these facts, defendants, during the temporary absence of complainants from the island, attempted to take possession of these lands by threats of intimidation.

The bill then proceeds to narrate various acts of the parties interfering with complainants' rightful possession, and prays for process, for an injunction against the defendants and to quiet their titles.

The defendants pleaded to the jurisdiction of the court, upon the ground that the lands are not situated in the State of Arkansas, but in the State of Mississippi. They also deny most of the material allegations in the bill, but, as upon the argument it appeared
149 that the only question necessary for a proper determination of the controversy is in what state the lands are lying, it is unnecessary, in this statement of facts, to refer to any parts of the answer other than those material to the plea to the jurisdiction of the court.

The plea or answer denies that the legal effect of the Act of Congress admitting the State of Mississippi into the Union fixes the eastern bank of the Mississippi River as the western boundary of the State, but charges that by that act the middle of the main channel of the Mississippi River was fixed as such boundary, and that the State of Mississippi has been in possession of all the island ever since, exercising jurisdiction over the same. They deny that at the time the surveys for Arkansas were made the main channel of the River was east of the island, but charged that at that time, and long prior thereto, and at the time of the admission of Mississippi into the Union, the main channel of the River was west of the island. They also deny that any officials of that State, authorized by law to act for the State, ever abandoned the State's claim of jurisdiction or conceded it to the State of Arkansas, and if they did do so, they acted without authority and in violation of the Constitution of the State of Mississippi, and their acts, therefore, were void and not binding upon the State.

E. D. Meyers, Rose, Hemingway & Rose, for Complainants.

A. Y. Scott and John M. Moore, for Defendants.

TRIEBER, *District Judge:*

I.

Where is the western boundary line of the State of Missis-
150 sippi, under the Act of Congress admitting the State into the Union?

The language of the Act of Congress admitting that State into the Union, approved March 1, 1817, describes the western boundary of the State as follows:

"Beginning on the River Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same; thence east * * * thence south * * * thence west along the said degree of latitude to the Mississippi River; thence up the same to the beginning:"

On the part of the complainants it is insisted that this Act fixes the boundary line at the Mississippi River, and not in the middle of the main channel of the River. In grants of land, the well settled rule is that:

"All the grantor's title will pass by the conveyance which describes the line along the river as running 'with' or 'along' the stream, or as running 'by' or 'on' or 'upon' the stream, or 'up' or 'down' the stream." 3 Farnham on Waters and Water Rights, Section 853, and numerous authorities cited there; Gould on Waters, Sec. 195.

In St. Louis *vs.* Rutz, 138 U. S. 226, the description was:

"To the present bank of the Mississippi River; thence along the extended line * * * to low water mark of the Mississippi River; and thence down to the extended line between surveys 156 and 157."

The contention was that the deed did not convey to the grantees the fee of the bend of the River beyond low water mark (in Illinois the riparian owners owning the bed of the river); but the court held that all the right, title and interest of the grantor, including the bed of the river to the middle of the main channel, passed by the conveyance.

See also on that point Vattel on the Law of Nations, par. 120; Handley *vs.* Anthony, 5 Wheat. 374; Indiana *vs.* Kentucky, 136 U. S. 479.

But from an examination of the treaties, cessions and acts
151 of Congress on that subject, there can be little doubt what the intentions of Congress were. The treaty between France Spain and England, concluded in February, 1763, stipulated that the middle of the Mississippi River should be the boundary between the British and the French territories on the continent of North America. This line has never been changed. It was recognized by the treaty of peace with Great Britian in 1783, and by different treaties since then, the last of which resulted in the acquisition of the territory of Louisiana (embracing the country west of the Mississippi River) by the United States in 1803.

The boundaries of the State of Missouri, when she was admitted into the Union as a state in 1820, were fixed on this basis, as were those of Arkansas in 1836. Missouri *vs.* Kentucky, 11 Wall. 395, 401.

At the time of the treaty between France, Spain and England in 1763, the colony of Georgia owned all of that territory, and consequently, by virtue of that treaty, to the middle of the main channel of the Mississippi River, the part west of the middle of the River belonging to France By the act of cession of the State of Georgia, April 24, 1802, that State ceded to the United States:

"All the right, title and interest which the said State has to the jurisdiction and soil of the land situated within the boundaries of the

United States south of the State of Tennessee and west of a line beginning on the western bank of the Chattahoochee River where the same crosses the boundary line between the United States and Spain."

The act of cession of Georgia then further provides:

"Fifthly. That the territory thus ceded shall form a state and be admitted as such into the Union as soon as it shall contain sixty thousand free inhabitants, or at an earlier period, if Congress shall think it expedient, on the same conditions and restrictions, with the same privileges," etc.

152 Sub-section 2 provides:

"The United States accept the cession above mentioned and on the conditions therein expressed," etc.

When in 1817 the State of Mississippi was admitted into the Union, Congress, in pursuance of the obligations assumed by the articles of cession and agreement of the State of Georgia before mentioned, could do nothing less than to cede to the State formed from this territory all the territory ceded by Georgia for that purpose.

When the territory of Arkansas was formed, its boundaries were: "All that part of the Missouri territory which lies south of a line beginning on the Mississippi River," etc. Act March 2, 1817; 3 Statutes, 493.

The territory of Missouri at that time constituted the northern part of the territory of Louisiana acquired by the treaty of 1803 with France, and included all that part of the Mississippi River west of the middle of the main channel, as defined by the treaty between France, Spain and England in 1763.

When in 1836 the State of Arkansas was admitted into the Union, its eastern boundary was fixed in the middle of the River.

If complainants' contention is to be sustained, the court must not only hold that Congress violated the trust it assumed by the articles of cession and agreement made with the State of Georgia in relation to this territory, but that it left the east half of the Mississippi River along the entire State of Mississippi without being incorporated in any State. This would hardly be a reasonable construction of the acts of Congress.

In the opinion of the court, the western boundary line of the State of Mississippi is the middle of the main channel of the
153 Mississippi River.

II.

Where was the main channel of the River at the time of the admission of Mississippi into the Union?

The well settled rule is that the boundaries of a state must be determined by what they were at the time of its admission, unaffected by the action of the forces of nature upon the course of the river. Missouri *vs.* Kentucky, 11 Wall. 395, 401; Indiana *vs.* Kentucky, 136 U. S. 479, 508.

The middle of the main channel of the Mississippi River being the boundary line between the States of Mississippi and Arkansas, the important question to be determined is where it was in 1817, when Mississippi was admitted into the Union and its boundaries

determined, not only by the Act of admission, but also by the act of cession of the State of Georgia, which, as shown hereinbefore, the national government accepted in trust for the purpose of creating a new state.

The "main channel," as defined by the Supreme Court of the United States, is the "main navigable channel, and not the thread of the stream or the middle of the bed of the stream." Iowa *vs.* Illinois, 147 U. S. 1.

In so far as it is sought to establish the fact where the main channel of the River was at that time, by oral evidence, it is very unsatisfactory, except that the evidence conclusively establishes the fact that ever since 1839, and probably two or three years before that time, up to the year 1881, the main channel was east of the island in controversy, and since 1881 up to the present time west
154 of the island. As to what it was prior to 1839, the testimony of some old river pilots is that as early as 1839 they had been advised that it had always been east of the island. On the other hand, in a letter written by Major Downing, at one time United States Surveyor of Public Lands in the State of Mississippi, to the Governor of Mississippi, in relation to that matter, he states that in 1835 he travelled a great deal on the River at that point, and that at that time the channel was where it is now, west of the island.

This testimony is so unsatisfactory and conflicting that it is hard to determine from it alone where the channel really was. Captain Miller, the pilot who was seventy-nine years old at the time his deposition was taken, might easily have been mistaken as to what his father really told him. He testified that his father had navigated the River as a bargeman since 1812, and when in 1839, he being then a boy seventeen years old, he made his first trip as a pilot with his father and brother, he was told that the channel had always been east of the island. It is easily conceivable that his father having told him that this was the channel, and being aware of the fact that his father had navigated the River ever since 1812, he concluded that his father meant that the channel had been east of the island ever since he had navigated the River. Major Downing's letter, written in 1859, is at best but slight evidence, as he was not an experienced river man, and the letter was but an *ex parte* statement made in an effort to secure the lands of the island for the State of Mississippi under the Swamp Land Grant of 1850.

Mr. Justice Davis, who delivered the opinion of the court
155 in Missouri *vs.* Kentucky, *supra*, in speaking of the testimony of men who navigated the river in the early days engaged in the business of flat-boating, which, he says, "is hardly ever undertaken in a low stage of water," says:

"There is nothing to show that any of them ever made a personal examination of the channels and surrounding objects at this point, and there is a remarkable absence of facts to sustain their opinions. It is also noticeable, in connection with this evidence, that none of the witnesses (Hunter may be an exception) ever lived in the vicinity of the island, or remained there any length of time, and that all the knowledge any of them acquired of the state of the river was

obtained by passing up or down it at different times, either on flatboats or steamboats. Notwithstanding they swear positively that the channel was always east of the island, yet Watson says it changed for about three years, and Ramney testifies that on one occasion, when the main channel was divided into three parts, the deepest water for a short time in the fall of the year was found on the west of the island, and steamboats passed on that side. * * * And passing the river only occasionally, and without any knowledge of where the volume of water flowed when the river was low, they would naturally conclude it was the main channel." 11 Wall. 403, 404.

This remark applies with great force to the testimony in this case.

Be this as it may, we are not confined to this testimony, as the maps and surveys and other acts of officials, made in those early days, enable the court to determine where the channel was prior to the admission of the State of Arkansas into the Union in 1836, and very near the time of the admission of Mississippi as a state in 1817.

The main channel of a river having been once established by proper proof, the presumption, in the absence of evidence to the contrary, will be that it was there before that time and remained there since. Thus, it being established conclusively, as found by the court, that the main channel of the river was east of this island in 1839, the presumption, in the absence of proof to the con-
156 trary, is that it was there before that time, even as early as 1802, when the State of Georgia ceded the territory to the government for the purpose of creating the State of Mississippi.

The first survey and map of the river in the vicinity of this island, so far as the evidence in this case shows, was made in 1821, under direction of the War Department of the United States. The endorsements on this map are: "Reconnoissance of the Mississippi and Ohio Rivers 1821. This reconnoissance of the Mississippi and Ohio rivers was made during the months of October, November and December, 1821, by Captain H. Young and Captain W. T. Poussin, of the Topographical Engineers, and Lieutenant S. Tuttle, of the Engineers, under the direction of the Board of Engineers. Soundings on the bars were made during the months of October and November and it is believed that they are accurate for the lowest stage of waters in common years. In very dry seasons, the lowest stage of waters would be about ten inches lower." The map also shows a "table of conventional signs used throughout this reconnoissance of the Mississippi and Ohio rivers," to explain the marks and different colors on the map. The copy introduced in evidence is certified by the Secretary of War to be "true copies of the originals on file in the office of the Chief Engineer, U. S. Army."

This map pretends to show the different islands, whether with growth of heavy timber or with willows, and subject to annual inundations. It also indicates dry sand bars, lines of shallow water, and the lines of the channel of the river. The scale of lengths is one inch to a mile, and for breadths two inches to a mile.
157 On this map the island in controversy is called "Chapeau Island." The coloring on this island indicates that it has a

growth of heavy timber on it; that to the east of it is a sand bar covering about one-third of the space between the island and the Mississippi main shore; and that for some further distance to the east (the Mississippi shore) there is shallow water, leaving but a narrow body of water between the main shore and the shallow water; and it also indicates that the channel of the river is to the west of the island.

The map next in date to that is the sectionalized survey, certified on January 22, 1829, by W. M. McRee, who signs it as Surveyor of Public Lands in Illinois, Missouri and Arkansas, which gives the survey of fractional Townships 11 and 12, Range 1 east of the Fifth Principal Meridian, in the State of Arkansas, conformable to the field notes of the surveys thereof on file in this office. This plat shows a survey of the lands on the main shore of the State of Arkansas opposite this island, but no survey of the island itself. It further shows a survey of the width of the river by triangulation. The surveys of the river made above and below the island in controversy extended to the main shore of the State of Mississippi, but where the island is, the survey was made only to the west bank of the island. There is a sketch of the island on the map, but no indication that it was surveyed or that it pretended to be anything near an accurate outline of the island. The surveys and field notes from which this map was made are certified on the map to have been made in February, 1827, by Daniel Miller.

The plat next in date introduced in evidence is that of a survey of Township 21, Range 8 West, Choctaw District, State of
158 Mississippi, made by Benjamin Griffin, a deputy surveyor, in January and February, 1830, and approved by Jos. Dunbar, Surveyor of Public Lands south of Tennessee. This plat bears the following endorsement: "Surveying the boundary lines, all section lines, connections to the front sections, traverse of both sides of Bolivar Lake, traverse of the Mississippi, charged by B. Griffin, Volume 3 1832. Also traverse and re-traverse of Island 76." This plat also shows only a survey of the lands on the main shore, but not of the island, although the endorsement "also traverse and re-traverse of Island 76" would indicate some kind of a survey of that island. A sketch of the island appears on this map, but nothing to indicate a survey or that it is more than a mere eye sketch.

The plat next in date introduced in evidence is another map of Township 21, Range 8 West, Choctaw District, and the field notes of the surveyors from which the map was made. This map shows the same survey of Township 21, Range 8 West, as the map last mentioned, and in addition thereto a complete survey of Island 76 and sectionalizing of the lands thereon, which are described on this map as fractional Sections 36 and 37 of Township 21, Range 8 West, Choctaw District, and containing the following endorsements: "The whole of this Township was surveyed by Benjamin Griffin, deputy surveyor, in January and February, 1830. Surveyor's office, Washington, Mississippi, May 31, 1830. Examined and approved. Jos. Dunbar, Surveyor south of Tennessee." The copy of this map introduced in evidence is certified to by the State Land Commissioner

of the State of Mississippi, who certifies, "That he has in his official keeping the records of the Surveyor General's office, and that
159 the map is a true and faithful tracing and copy of and from the original now on file and in his official keeping." In the deposition of Mr. Nall, the Commissioner of State Lands for the State of Mississippi, he explains that all the records of the Surveyor General's office for the State of Mississippi were turned over to the State of Mississippi and are kept in his office. A copy of this map was filed with the Department in Washington in October 1836 as shown by a letter of Hon. Thos. A. Hendricks the Commissioner of the General Land Office in 1859. The certified copies of the original field notes of Township 21, Range 8 West, filed on April 9, 1830, do not show that the island was included in the survey of that Township, but a certified copy of additional field notes filed in the Surveyor General's office for Mississippi on October 30, 1830, show a complete survey of Island 76, beginning at the upper end, made by Benjamin Griffin, the same deputy surveyor who surveyed that township on the main shore. On these field notes, which are stated in black ink to be those of Township 22, Range 8 West, Choctaw District, the following endorsements are in red ink: "Island 76 is in Township 21, Range 8 West, and not in Township 22, Range 8 West, and that, instead of section- 6 and 7, they should be sections 36 and 37, Township 21, Range 8 West." In another place, where the notes in black ink are "Beginning at the upper end of Section 6 (Island 76)," the words "36 in Island 76" are written in red ink above. In another place on these field notes there is written in red ink: "Section 6 should be Section 36, Township 21, Range 8 West;" and where the survey of Section 7 begins, there is an interlineation in red ink, "Section 7 should be Section 37, Township 21 *21*, Range 8 West." Another endorsement on these field notes is: "Distance across the shoot of Island 76, from the beginning of the last station north 40 east 2920 in-
160 tersecting the opposite traverse, 26 chains on the first station," indicating that the beginning of the survey of Island 76 at the upper end of it was, by actual measurement from the last station surveyed in Township 22, Range 8 West, on the main shore of the Mississippi River, 26 chains. By the depositions it is also proven that when Benjamin Griffin made the survey of this island and prepared his field notes, he intended to survey it as a part of Township 22, but when he made the plats he found that the island was too far south to be in Township 22 but should properly be in Township 21, and for this reason made them as Sections 36 and 37, all other sections being included in the original survey of Township 21.

In 1846 when the undisputed evidence shows that the channel had for several years changed to the east of the island another survey of the island was made by the Surveyor General of the Public Lands in Arkansas, and the lands section*al*ized as fractional Sections 35 and 36, Township 11 South, Range 1 East of the Fifth Principal Meridian, and fractional Sections 1 and 2 of Township 12 South, Range 1 East of the Fifth Principal Meridian. This plat contains the following endorsements: "Surveyor's office, Little Rock, Arkansas, 23rd December, 1846. The above plat of fractional Sections 35 and 36 in

Township 11 South of the Base Line, Range 1 East of the Fifth Principal Meridian, and of fractional Sections 1 and 2, Township 12 South of the Base Line, Range 1 East of the Fifth Principal Meridian, is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved. The subdivisional lines meanderings of Townships 11 and 12 South, Range 1 East, and south boundary of fractional Sections 35 and 36, Township 11 South, Range 1 East, amounting to 7 miles 39.11 chains, were surveyed in February, 1846, by John W. Garretson, D. S.,
161 under contract of 24 September, 1845, and were paid for by the Treasurer of the United States upon the account rendered and accepted by John W. Garretson, D. S., and certified from this office as Voucher No. 1, Fourth Quarter, 1846. (Signed) William Pelham, Surveyor of Public Lands in Arkansas." The copy introduced in evidence is certified by the Department of the Interior to be a true copy of the township plat of the survey to which it purports to relate now on file in that office.

It will be noticed that the surveys made by the Surveyor of Public Lands in the State of Mississippi describe the lands according to the Choctaw Meridian established for public lands east of the Mississippi River, while the Surveyor in the State of Arkansas describes them as south of the Base Line and east of the Fifth Principal Meridian, the lines established by the national government for surveys of public lands west of the Mississippi River. No doubt this contributed somewhat to the confusion of the officers of the Land Department, as will be shown hereafter.

In 1847, after the filing of the Pelham survey, these lands were placed by the national government on the lists of public lands subject to sale with the Register of the United States Land Office at Helena, Arkansas, under the description of the Pelham survey, but there is nothing to indicate that they were ever placed on sale in any of the United States land offices for the sale of the public lands in the State of Mississippi.

In 1847 all of these lands except 51 acres were sold by the National Government to various parties and patents issued to them, describing the lands as lying in Township- 11 and 12 South, Range 1 East of the Fifth Principal Meridian "in the district of lands sub-
162 ject to sale in Arkansas," but not describing the county or state in which they were situated.

The 51 acres not sold by the government were, in 1859, patented to the State of Arkansas under the Swamp Land Act of September 28, 1850. The lands on the island were selected by the State of Mississippi under the Swamp Land Grant Act of 1850 on June 12, 1852, and approved as such on September 24, 1854. In 1854, before any patents to the lands had been issued by the national government, the State of Mississippi sold these lands to W. G. Ford, but as the lands had been sold by the government, through the Arkansas Land Office, in 1847, no patent therefor was ever issued to the State of Mississippi, the Act of 1850 granting to the states only the unsold lands.

The field notes of the Mississippi survey made in 1830, and the

testimony of witnesses also establish the fact that the island was highest on the west side; that some timber had been cut on the same part of the island, and the small clearing was on that part of the island. This is of some importance, as it is well known that the lands bordering on the Mississippi River are always highest next to the main channel, and slope downward away from the river. This is owing to the fact that the annual overflows of the river leave most of the sediment on the bank nearest the main channel; as the timber cut in those days was used almost exclusively to supply steamboats with fuel, it was naturally cut near the channel which the steamboats used in navigating the river, and clearings were made nearest to the boat landings in order to enable the parties easy access to the boats, which at that time were the only means of conveyance for freight and passengers.

163 Taking these facts into consideration, and the facts that the map made in 1821 under direction of the War Department, the survey by Miller of the public lands in Arkansas in 1827, and the plat made from this survey by McRee in 1829, and the plat from the survey made in 1830 by Griffin, deputy surveyor of public lands in the State of Mississippi, and approved by Dunbar, Surveyor General for that State, treat the island as being in the State of Mississippi and the further fact that, as shown by that latter map, the bed of the river between the island and the main shore of the State of Mississippi was at that time in some places so narrow as to make it impossible for the immense volume of water running in the Mississippi River at that place to pass, the finding of the court is that in 1836, as well as in 1817 and long before that time, Island 76 was east of the middle of the main channel of the Mississippi River, and for this reason a part of the State of Mississippi and not within the boundaries of the State of Arkansas as defined by the Act of admission of that State.

III.

Has there been such an assumption of sovereignty by the State of Arkansas, and acquiescence by the State of Mississippi, as to change the sovereignty over the island from the State of Mississippi to the State of Arkansas?

In determining this question, we must not overlook the well established distinctions between ownership of lands and the exercise of sovereignty by sovereign states; at the same time, although the states of this Union are sovereign and possess all the powers of sovereign states except those powers which, by the Constitution,

164 are granted to the general government, the rules of international law governing independent nations cannot be applied to the full extent in relation to these subjects of prescription and acquiescence. There is no written law to settle disputes of that kind between independent nations, nor is there any tribunal whose jurisdiction can be invoked by one of the parties without the consent of the other and whose judgment will be conclusive on both parties. Nor must the fact be overlooked that, while the boundaries of the dif-

ferent States of the Union are well defined, especially of those admitted since the adoption of the national Constitution, by acts of Congress admitting them, a great deal of the territory claimed by other nations depends solely upon discovery or the right of possession. Disputes of that nature between independent nations can only be settled by treaty or conventions to submit to arbitration or resort to the sword, while, on the other hand, our Constitution provides for a tribunal to settle these matters, whose jurisdiction can be invoked by either of the parties to the dispute regardless of the wishes of the other party, and whose judgment is conclusive on all parties.

It has never been authoritatively determined by the courts of the United States whether a state can lose its territory by prescription and acquiescence. In 26 Am. & Eng. Enc. Law (2nd Ed.), 469, the author says:

"The period of time which in equity constitutes a bar is held not to apply to the case of a disputed boundary between two states, especially where the boundary is in a wild and unsettled country; but it seems that long possession under a claim of title will be protected, especially where there is not clear proof of mistake."

165 In Belding *vs.* Hebard, 103 Fed. 532, 43 C. C. A. 296, the head note is:

"It having been found as a fact from sufficient evidence furnished by the confirmatory acts of the two states (Referring to the states of North Carolina and Tennessee), based on the report of the joint commission, and by the natural objects therein designated, that the state boundary was actually run and established along Hangover ridge, that boundary could not be changed by the action of the state authorities in recognition of the other line claimed, unless such recognition has been so long and continuous on the part of both states as to create a mutual estoppel, and constitute an adoption of such line as the true and established boundary. It is not sufficient to create such estoppel or constitute such adoption that the surveyor general of Tennessee, in 1836, stopped the survey of lands adjacent to the boundary ceded by the Indians at the marked line of trees on Slick Rock creek, and that for that reason, and because of such marked trees, such line was generally reputed to be the boundary until 1882; it appearing that no grants of any of the lands in the disputed territory were made by North Carolina prior to 1853, and no settlers entered it until 1860, and very few thereafter, all of whom were squatters without title, who have claimed citizenship in one or the other state, as best served the interests of their landlords; and that since 1862 grants have also been made by Tennessee, and opinion as to the true boundary has been divided."

In Rhode Island *vs.* Massachusetts, 4 How. 591, the question of boundary between two states was involved, but in that case the court found that the original charters were somewhat ambiguous; that over 200 years had elapsed since the charter of Massachusetts was issued, and over 180 years since the Rhode Island charter; that in 1702 commissioners were appointed by the colonies of Massachusetts and Connecticut to settle the boundaries between them, which was accordingly done; that in 1710 Massachusetts and Rhode Island

appointed commissioners to determine this line, and it was determined by them at that date; that in 1718 commissioners appointed by those states in 1716 and 1717 again determined the boundary line, which was accepted by the general assemblies of both states; and that since that time Massachusetts has always
166 claimed and exercised jurisdiction over the land up to the line designated. While some protests were made by Rhode Island from time to time, nothing definite was done by her to offset the decisions of these commissioners. Upon these facts the court held that no mistake was clearly established but even if it had been established, that the court would not disturb these settlements.

In Missouri *vs.* Kentucky, 11 Wall. 395, the same question came before the court. In that case the court found the facts to be that Kentucky, ever since it was a state and up to the time of the institution of the suit by Missouri, exercised jurisdiction over the island in controversy; that it was embraced within her surveys made in 1837; that the people residing thereon paid their taxes to Kentucky and voted in that state, and at one time one of its residents was elected as a member of the general assembly of the State of Kentucky. On the other hand, Missouri never attempted to subject the inhabitants of the island to her laws or to exercise any jurisdiction therein.

The court also found, from certain physical facts connected with the island, somewhat similar to those established in this case, that it must have been at one time a part of the main shore of Kentucky and at some remote period separated by the formation of the east channel.

Upon these facts the court held that the island was a part of the State of Kentucky. The exercise of jurisdiction by Kentucky was not held by the court as being conclusive, but was a strong circumstance when considered in connection with the other facts established by the proof.

In Indiana *vs.* Kentucky, 136 U. S. 479, the State of Indiana waited for over seventy years after her admission as a state
167 before she instituted the action, and during all of that period the court found:

"It was over seventy years after Indiana became a State before this suit was commenced, and during all this period she never asserted any claim by legal proceedings to the tract in question. She states in her bill that all the time since her admission Kentucky has claimed the Green River Island to be within her limits and has asserted and exercised jurisdiction over it, and thus excluded Indiana therefrom, in defiance of her authority and contrary to her rights. Why then did she delay to assert by proper proceedings her claim to the premises? On the day she became a State her right to Green River Island, if she ever had any, was as perfect and complete as it ever could be. On that day, according to the allegations of her bill of complaint, Kentucky was claiming and exercising, and has done so ever since, the rights of sovereignty both as to soil and jurisdiction over the land. On that day, and for many years afterwards, as justly and forcibly observed by counsel, there were perhaps scores

of living witnesses whose testimony could have settled, to the exclusion of a reasonable doubt, the pivotal fact upon which the rights of the two States now hinge and yet she waited for over seventy years before asserting any claim whatever to the island, and during all those years she never exercised or attempted to exercise a single right of sovereignty or ownership over its soil. It is not shown, as he adds, that an officer of hers executed any process civil or criminal, within it, or that a citizen residing upon it was a voter at her polls, or a juror in her courts, or that a deed to any of its lands is to be found on her records, or that any taxes were collected from residents upon it for her revenues."

The court thereupon held:

"This long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the island is more potential than the recollections of all the witnesses produced on either side. Such acquiescence in the assertion of authority by the State of Kentucky, such omission to take any steps to assert her present claim by the State of Indiana, can only be regarded as a recognition of the right of Kentucky too plain to be overcome, except by the clearest and most unquestioned proof. It is a principle of public law universally recognized, that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority."

At the end of the opinion, on page 518, the court said:

"We have not deemed it important to take up the testimony of each of the numerous witnesses produced in the case by the States of Indiana and Kentucky. It would serve no useful purpose
168 to attempt an analysis of the testimony of each, and to show how little and how much weight should be attributed to it. All the testimony is to be taken with many allowances from imperfect recollection, from the confusion by many witnesses of what they saw with what they heard, or of what they knew of their own knowledge with what they learned from the narrative of others. The clear and admitted facts we have mentioned, corroborated as they are by nearly everything of record presented, leave on our minds a much more satisfactory conclusion than anything derived from the oral testimony before us. The long acquiescence of Indiana in the claim of Kentucky, the rights of property of private parties which have grown up under grants from that State, the general understanding of the people of both States in the neighborhood, forbid at this day, after a lapse of nearly a hundred years since the admission of Kentucky into the Union, any disturbance of that State in her possession of the island and jurisdiction over it."

In Virginia *vs.* Tennessee, 148 U. S. 503, the boundary line between those States had been fixed in 1802 by *by* commissioners appointed by the two States and approved by them. Ninety years later Virginia instituted her suit to establish the boundaries according to the original charters granted by the English sovereign which it was alleged entitled her to a part of the territory claimed by Tennessee. The court in that case, speaking on the subject of acquiescence, say:

"Independently of any effect due to the compact as such, a boundary line between States or provinces, as between private persons, which has been run out, located and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the course given in the original grant; and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary." 148 U. S. 522.

Further on in the opinion, in speaking of the fact that in two districts of small dimensions the residents have always voted as citizens of Virginia and have recognized themselves as citizens of that State, the court say:

"That fact, however, cannot affect the potency and conclusiveness of the compact between the States by which the line was established in 1803. The small number of citizens whose expectations
169 will be disappointed by being included in Tennessee are secured in all their rights of property by provisions of the compact passed especially for the protection of their cialms." 148 U. S. 527.

From these authorities, the conclusion reached by the court is that a State may lose its sovereignty and jurisdiction over its territory by prescription and acquiescence whenever these facts are clearly established.

The authorities do not agree as to the length of time for which such acquiescence must continue before there will be a loss of jurisdiction. Some eminent writers on international law have suggested a period of fifty years, but I am of the opinion that the safest rule to accept would be that of the common law that in order to acquire title by prescription the exercise of ownership must have been for such length of time that "the memory of man runneth not to the contrary."

Do the facts in this case show such acquiescence on the part of the State of Mississippi, and are the acts of the State of Arkansas relative to this island such, and have they been for such length of time, as will estop the State of Mississippi from now claiming its own?

In De Bussche *vs.* Alt, 8 Ch. Div. 286, 47 L. J. Ch. 381, 38 L. T. 370, Lord Justice Thesiger defines acquiescence as follows:

"If a person having a right and seeing another person about to commit or in the course of committing an act infringing upon that right, stands by in such manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. This, as Lord Cottonham, in Leeds *vs.* Amherst, 2 Ph. 117, 16 L. J. Ch. Div. 5, 10 Jur. 956, said, is the proper sense of the term acquiescence, and in that sense it may be defined as quiescence under such circumstances as that assent will be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct."

170 In Scott *vs.* Jackson, 89 Cal. 262, the court defined acquiescence to be:

"Where a person who knows that he is entitled to impeach a transaction or enforce a right neglects to do so for such a length of time that, under the circumstances of the case, the other party may fairly infer that he has waived or abandoned his right.

From the proofs adduced the following facts appear: That until shortly before the institution by defendants of the suits in the courts of the State of Mississippi for unlawful detainer and the commencement of this action, the island was not inhabited except when timber was cut and a small clearing was made; that whenever possession was had it was desultory, and there is not any evidence to justify a finding that there was a permanent possession by any one claiming title, or that those who went on the island were citizens of Arkansas or Mississippi; that immediately after the issuance of the patents by the United States the proper authorities of the State of Arkansas placed the lands on the tax books and assessed them as lands lying in that State, and continued to do so ever since, although the tax books prior to 1865 for the County of Desha, in which said lands were assessed, were destroyed during the war and there is no positive evidence to show such assessments prior to 1865. In view of the fact that the laws of the State of Arkansas require all lands, when sold by the national government, to be placed on the tax books and assessed for taxation, the presumption is that the officers obeyed and executed the law. On the other hand, it appears that immediately after the passage of the Swamp Land Grant Act of 1850, when the State of Mississippi selected the swamp and overflowed lands subject to the grant, which was done in 1852, they included these
171 lands among those selected by her. That in 1854 the selections thus made, including the lands on the island, were approved by the Secretary of the Interior, although no patent was issued to the State of Mississippi to any of the lands until 1858. Shortly after the approval of the selections made by the State of Mississippi, the authorities of that State, acting, no doubt, under the belief that the grant made by Congress was *in presenti* and that the approval, therefore, by the Secretary of the Interior vested a perfect title in the State to all the lands selected, and without waiting for the patent, sold these lands to one Ford. On February 28, 1855, it having been, no doubt, ascertained by Ford that the lands purchased by him had theretofore been sold by the government under the Pelham survey as lands situated in Arkansas, Hon. John Wilson, then Commissioner of the General Land Office, to whom, Hon. Jacob Thompson, then one of the representatives in Congress from the State of Mississippi, had mentioned the subject, in a letter written by him to Mr. Thompson in which he refers to a conversation had with him the day before, states:

"That it appears on reference to the plats in this office Island No. 76 was surveyed by the Surveyor General of Mississippi as a part of Township 21 North of Range 8 West of the Choctaw Meridian and Base Line, returned with his certificate of approval, bearing date the — day of October, 1836, and that the island No. 76 was surveyed under direction of W. Pelham, Surveyor General of Arkansas, in February, 1846, as parts of Townships 11 and 12 South of Range 1 East of the Fifth Principal Meridian in that State, and certificate

to this office the 23rd December, 1846. The island does not appear to have been offered at public sale in either State. I am of the opinion, from the inspection of the plats, that the island in question belongs to the jurisdiction of Mississippi and should not have been surveyed and returned as lying in the State of Arkansas. Still, I must qualify this opinion by stating that, if it should be found by measurements and evidence taken on the subject, that the middle of the main channel of the River as it existed in 1817, the date of the admission of the State of Mississippi, prescribed her boundaries was situated east of the island and remained unchanged until the
172 year 1836, the date of the Act of admission of Arkansas as a State, then the island undoubtedly belongs to the latter, but if, in 1817, the middle of the main channel was east of the island and in 1836, by changes in the bed of the river, was west of the island, then it will occupy the peculiar position of not being within the limits of either State according to the boundaries prescribed by the acts of admission."

On May 3, 1859, the Governor of the State of Mississippi wrote to Hon. Jacob Thompson, then the Secretary of the Interior, in relation to that matter, stating:

"Island 76 was confirmed to the State by the Federal Government and afterwards sold to William G. Ford. I am informed that this island is now claimed by the State of Arkansas. The enclosed letters from Major Downing and William Ford, with the certificate of the Secretary of State, contain all the information in my posession on the subject. You are hereby requested to adjudicate the case and to confirm or sustain the title of Ford through the grant to this State."

The letters referred to are one from W. G. Ford to the Governor, making his claim to these lands, and also enclosing a letter from A. Downing, at one time the Surveyor General of Public Lands for the State of Mississippi, in which Major Downing says:

"Island 76 was surveyed, I think, in 1830 or '31, as part of Township 21, Range 8 West. At that time, and for some years after, the island shoot, as it was called, was quite narrow. I think that about opposite the middle of the island the shoot was not over a hundred yards wide. I have been told that deer had been and could easily be shot from the eastern shore of the river upon the island, and from my own observation, I have no doubt but they could, for at that time I had never heard of a steamboat going up or down on the east side of the island. The main river then passed on the west side of the island. I think it was 1835 I spent some time in Township 21, Range 8 West, examining the land in that district. The east bank of the river opposite the island had not fallen in much. The island shoot at that time was quite narrow."

These communications were, by the Secretary of the Interior, referred to the Commissioner of the General Land Office, at that time Hon. Thomas A. Hendricks, of Indiana. Mr. Hendricks, on July 23, 1859, wrote the following letter to the Governor of Mississippi:

173 "As it appears on reference to the plats in this office, this island was surveyed by the Surveyor General of Mississippi

as a part of Township 21 North Range 8 West, Choctaw Meridian, Mississippi, and returned with the certificate of approval under date of October, 1836. It also appears that, under the direction of the Surveyor General of Arkansas, this island was surveyed in February, 1846, as a part of Township- 11 and 12, South, Range 1 East, Helena District, Arkansas, and returned with certificate of approval dated December 23, 1846. A proclamation for the sale of lands in the Helena District, including this island, was made and the tracts on said island were duly offered for sale on the 12th of July, 1847. Subsequently the greater portion of the tracts were entered and patents were issued to the purchasers prior to the 28th of September, 1850, the date of the swamp grant. The island as situated within the limits of the State of Mississippi has never been preclaimed for sale. The question of State jurisdiction over this island was presented to my predecessor, and he in a communication of the 28th of February, 1855, says: (quoting here the letter of Mr. Wilson hereinbefore referred to."

He then proceeds:

"With your letter I find the statement of A. Downing, dated 18 January, 1859, going to show that said Island 76 belongs to the Mississippi side and falls within our limits as defined by the treaty of 1763. Mr. Downing was formerly Surveyor General of Mississippi and great reliance is to be placed upon his statement. If, therefore, you will add to it his affidavit, with the testimony of any other disinterested witness, so as to bring the matter within the qualification of my predecessor's opinion, and stating that the island is of a swampy character—such is the additional testimony contemplated by Secretary McClellan's decision, as required by the 2nd Section of the Act of 2nd March, 1855—notwithstanding the island has been reported as swamp—the testimony will then be fully of equal grade to that required in cases analagous, and thereupon an account will be opened between the State and the United States, with a view to her reimbursement by treasury warrant of the amount of cash," etc.

Shortly thereafter, in the early part of 1861, the States of Mississippi and Arkansas attempted to secede from the Union, and the civil war having broken out, nothing further seems to have been done until after the close of the war in 1865, when the proper officers of Desha County, State of Arkansas, again assessed the lands as being in that State. The evidence fails to show what became of
174 Ford or the purchasers from the national government who bought them as Arkansas lands, and the probabilities are that they all died during the war. No one paid the taxes assessed against the lands by the Arkansas authorities, and the lands were forfeited to the State of Arkansas for the non-payment thereof, and they remained in that condition until 1882, when the State of Arkansas, under an Act of its legislature enacted in 1881, known as the "Overdue Tax Law," instituted proceedings in equity in the Circuit Court of Desha County for the purpose of having the lands sold for the taxes due thereon. As hereinbefore stated, there was a decree condemning the lands to be sold, and the grantors of complainants became the purchasers thereof.

It may be proper to state here, in connection with this matter, that when the legislature of the State of Mississippi, in 1836, created the County of Bolivar, as well as several other counties bordering on the Mississippi River, in defining the western boundaries, the language used in the Act of Congress admitting the State into the Union, "To the Mississippi River; thence up the Mississippi River," was followed by the legislature, but in 1838 the legislature, in defining the boundaries between Bolivar and other counties, used the language, "Thence down the main channel of the said Mississippi River."

In adopting the Revised Code of Mississippi, known as Hutchinson's Code, approved February 2, 1857, a concise history of the limits and boundaries of the State was included in the Code, and the boundaries of the State of Mississippi, in-so-far as it affects this case, are described as follows:

175 "Thence west along the said degree of latitude to the middle or thread of the stream of the Mississippi River; thence up the middle of the Mississippi River or thread of the stream to the place of beginning, including all islands lying east of the thread of the stream of said River." Art. 1, Sec. 2, p. 49, Hutchinson's Code.

Article 2 of the same section, found on page 50 of that Code, provides:

The counties lying immediately on the Mississippi River shall respectively have and possess jurisdiction and extend to the middle of the River or western boundary of the State within the space embraced by extending their boundary lines which strike the River on a continuous, direct course to the extreme boundary of the State, including all islands that may be within the limits thus defined.

The Constitution of the State of Mississippi adopted in 1868 merely provides that:

"The limits and boundaries of the State of Mississippi shall remain as now established by law." Art. 2.

The Constitution of the State adopted in 1890 defines the boundaries, so far as it is applicable to the issues involved in this cause, as follows:

"Thence west along said degree of latitude to the middle or thread of the stream of the Mississippi River; thence up the middle of the Mississippi River or thread of the stream to the place of beginning, including all islands lying east of the thread or stream of said River, and also including all lands which were at any time heretofore a part of this State." Art. 2, Sec. 3.

Section 4 of Article 2 provides:

"The legislature shall have power to consent to the acquisition of additional territory of this State and make the same a part thereof, and the legislature may settle disputed boundaries between this State and its coterminous States whenever such disputes arise."

The first act on the part of any of the officials of the State of Mississippi, after the Civil War, which in any way indicates a claim of this island as a part of the territory of that State was a resolution of the Board of Supervisors of Bolivar County, reciting that,

176 Whereas, many tracts of land in that county subject to taxation are not assessed upon the tax books of the county, men-

tioning among others the lands on Island 76 described by the Mississippi survey, the assessor was directed to assess them for taxation, which was accordingly done and the assessment made to "unknown owne." The taxes not being paid on these lands, they were in 1882 forfeited to the State of Mississippi, and not having been redeemed within the time prescribed by the laws of that State, were placed on the book of State lands of that State as lands forfeited to the State for the non-payment of taxes. In 1891 these lands were sold by the State of Mississippi to Hull & Curry, and immediately thereafter assessed to them for taxation by the proper authorities of Bolivar County. In 1892 Hull & Curry filed a petition with the Commissioner of State Lands of that State, reciting that, since purchasing them, they had ascertained that the lands were not subject to taxation in the State of Mississippi, as they were lying in the State of Arkansas, and asked for a refunding of the purchase money paid by them. The Act under which this proceeding was had is section 3831 of the Annotated Code of Mississippi, adopted by the legislature in 1892. That Act is as follows:

"If land be sold for taxes when no taxes are due on it, or it is not liable to be sold for taxes, the sum paid by the purchaser for the amount of his bid, and the costs of the sale and conveyance, with six per centum interest per annum, shall be refunded to him, or the holder under him, by descent or purchase, im-ediately or immediately, by the state or county respectively, in proportion to the amount received by each; and in such case the claim against the state shall be audited and allowed by the auditor of public accounts on due proof, with the approval of the governor and the attorney general, and he shall draw his warrant on the treasurer for the amount shown to be due; and the claim against the county in such case shall be allowed by the board of supervisors of the county, and paid out of the county treasury, on the certificate of the auditor of public accounts of the refunding of the state tax. If in such cases,
177 the money paid by the purchaser be not paid into the state and county treasuries, the collector shall be liable on his official bond to the purchaser for the amount so paid, and twenty-five per centum interest per annum on such sum, and the state and county shall not be liable. The provisions of this section shall extend to taxes collected for levee purposes where land is improperly sold, and the amount due in such case shall be paid to the proper person by the levee treasurer on the order of the levee board.

The board sustained the claim of Hull & Curry and directed the refund to them of the purchase money out of the treasury of the State, which was done. Hull & Curry thereafter failed to pay the taxes assessed against the land; whereupon it was again forfeited to the State of Mississippi. The Auditor of Public Accounts of that State (who is *ex-officio* the State Land Commissioner), being in doubt as to whether these lands should, in view of the former action of the Board, be placed on the land books of the State, called upon the Attorney General of the State for his opinion, and that official, in an opinion dated April 20, 1894, advised him to adhere to the former ruling of the Board and treat the lands as lying in the State of Arkansas. For some reasons not explained, the Land Commis-

sioner declined to follow the opinion of the Attorney General, but placed the lands on the books as lands belonging to the State. Thereafter, in 1899, the defendants in this case purchased them from the State of Mississippi, receiving proper deeds of conveyance therefor, and now claim title under these deeds.

There is no attack in the case at bar upon the titles to these lands acquired by virtue of the patents issued by the United States to the purchasers of the lands as Arkansas lands; but it is insisted that, although the title passed from the United States to these purchasers, the lands being in the State of Mississippi were subject to
178 taxation there and to sale for non-payment of the taxes, and that not lying in the State of Arkansas this court is without jurisdiction to determine the title thereto.

The island being uninhabited, there can be no doubt but that the act of the officials of the State of Arkansas in assessing these lands for taxation was the only act of sovereignty that could have been, under the circumstances, exercised over them by the State of Arkansas. Therefore, the conclusion naturally follows that the State of Arkansas did, ever since 1848, make claim to the island as being a part of her territory; but, on the other hand, can it be said that the State of Mississippi, after learning of the claim of the State of Arkansas, acquiesced in those acts of sovereignty on the part of the State of Arkansas? As early as 1838, and ever since that time, the legislature of that State claimed the western boundary to be in the middle of the River. In 1852 they selected them as swamp and overflowed lands, under the Swamp Land Grant made by Congress in 1850. In 1854, shortly after the approval of her selections by the Secretary of the Interior, the lands were sold by her to Ford. While it is true that there is nothing to show that these lands thereafter were placed on the tax books and assessed for taxation by the authorities of Bolivar County, that may be accounted for by reason of the fact that no patent having ever been issued by the government to the State of Mississippi, or to anyone else, they probably did not consider them as subject to taxation. In 1855 some claim to these lands must have been made by Hon. Jacob Thompson, one of the representatives in Congress from that State; otherwise the letter of Hon. John Wilson then the Commissioner of the General Land Office
179 of the United States, would not have been written. In 1858 the Governor of the State again made claim to these lands by addressing the Secretary of the Interior on the subject. The breaking out of the Civil War, and the confusion incident thereto after its conclusion will explain the delay between that time and the order of the Board of Supervisors of Bolivar County made in 1881 to place these lands on the tax books. At all events, that delay was not for so long a time as to estop the State from claiming its own by reason of acquiescence.

What was the effect of the action of the Board composed of the Governor, Attorney General and Commissioner of State lands in refunding the money to Hull & Curry and determining that these lands were not in the State of Mississippi, but in the State of Arkansas? Are the acts of this Board conclusive on the State of Mis-

sissippi? That the legislature could have invested that Board, or any other commission, with such powers is, no doubt, true. It may also be assumed that, if that Board had jurisdiction and power to determine that question, its acts would be conclusive on the State, but does the Act vest such power in that Board? A careful examination of the Act will not warrant this contention. What was intended by the Act, as I consider it, was to enable any person who had purchased lands from the State and whose title failed, by reason of the fact that there were no taxes due on them, or that they were not liable to be sold for taxes, to have the money refunded to him. It is true, the language used, "not liable to be sold for taxes," is broad enough to include lands not within the State and for this reason not subject to taxation, but it is hardly reasonable to suppose that the legislature would have granted powers to any board without using lan-
180 guage which was so clear that there could be no question as to its intentions. The fact that the same Act provides that, if the collector has failed to pay the money into the State and County treasuries, he shall be liable to a heavy penalty therefor, would indicate that one of the objects of the Act was to refund the money if lands have been returned delinquent after the taxes had been paid thereon by the owner. The language "Not liable to be sold for taxes" was, no doubt, intended to mean that where lands which, under the laws of that State, were exempt from taxation and yet were assessed and forfeited to the State for non-payment of the taxes, as no title would pass to the State by the forfeiture, the owner should be recompensed by the return of his money.

In Hubbard *vs.* Garfield, 102 Mass. 75, the Board of Assessors for a given year had struck off certain articles of property as not subject to taxation, and several years thereafter the Board, composed of different individual members, restored these articles of property to the tax list. The contention was that the action of the former board was conclusive, but the court said:

"The intention of the law is to be judged with reference to the nature of the proceedings which it affects and the character given to them by previous legislation, and with the aid thus derived, it is apparent that the assessors may add new names to the collector's list, as at least one legal mode of making the assessment. The mode would be less open to objection when the addition is made during the year by the same assessors and before the expiration of the collector's term of office, but the assessors constitute a tribunal with powers which imply a continual and uninterrupted condition not limited to the individuals who at any given time compose it. And if this were otherwise, the law in question expressly gives the power of reassessment to the assessors for the time being. If it be said that this construction gives to this class of town officers great power over the person and property of the citizen, the answer is that it is no more than must necessarily be had for the discharge of the important and difficult duties connected with taxation, and no more
181 than has been exercised from the earliest time under existing laws.

so N. Y. The same conclusion was reached in Lamb *vs.* Commissioners

In People *vs.* Roberts, 155 N. Y. 408, 413, the court, in speaking of the determination of assessing and taxing officers, say:

"We think there is no ground for holding that the action of mere assessing officers can determine that property is exempt from assessment for one year and preclude the State as to the taxes imposed in succeeding years and prevent other officers from complying with the clear and plain requirements of the statute."

An Act of the legislature claimed to vest in any board the power to determine questions pertaining to the sovereignty of the State over territory cannot be presumed to have been granted by a State unless the language used is such that no other conclusion can be reached.

As was said by the Supreme Court of the United States in Cummings *vs.* Chicago, 188 U. S. 410, 430:

"If it (Congress) had intended by the Act of 1899 to assert the power to take under national control for every purpose and to the fullest possible extent the erection of structures in navigable waters of the United States that were wholly within the limits of the respective States, and to supersede entirely the authority which the States, in the absence of any action by Congress, have in such matter, such a radical departure from the previous policy of the government would have been manifested by clear and explicit language. In the absence of such language, it should not be assumed that any such departure was intended."

It is a well settled principle of law that the State cannot be precluded by the laches of its officers from asserting any right or claim, nor is the State bound by the errors and mistakes of its officers in making settlements in its behalf. Cooke *vs.* United States, 91 U. S. 389.

The opinion of the Attorney General of the State of Mississippi, while entitled to the highest respect, is not conclusive on that State or any of the courts. The instances in which the courts have
182 declined to follow the construction placed upon statutes by Attorneys General of the United States or of the States are numerous, and the fact that the State Land Commissioner of that State declined to act upon that opinion, although given in response to his own request, clearly indicates that even executive officers in the State of Mississippi do not consider the opinions of the Attorney General as anything but advisory.

Upon the facts as found by the court in this case, there was no such acquiescence on the part of the State of Mississippi nor exercise of sovereignty by the State of Arkansas for such length of time as would warrant the court in holding that the State had lost its territory. The finding being that the lands in controversy are not situate in the State of Arkansas, it follows as of course that this court is without jurisdiction to try the case on its merits, and the bill will be dismissed for want of such jurisdiction.

Endorsed:—Filed Jan'y 10, 1906. W. P. Feild, Clerk.

183 The complainants first read in evidence the original pat- Arkansas to the land in controversy consisting of the Exhibits to the Bill of Complaint numbered one to ten, inclusive.

See Folio 19 this Record for these Exhibits.

The complainants next read in evidence the following exhibits to the Bill of Complaint.

1. Deed of the State of Arkansas to Sallie H. Murphy.
   See Folio 46 this Record for Deed.
2. Deed of J. S. Ross, Commissioner to Sallie H. Murphy.
   See Folio 48 this Record for deed.
3. Patent from the State of Arkansas to Joe Evans.
   See Folio 42 this record for Patent.
4. Deed from Joe Evans and wife to Sallie H. Murphy.
   See Folio 44 this record for Deed.
5. Deed from Sallie H. Murphy to Moore and McFerrin.
   See Folio 52 this Record for Deed.
6. Abstract of Title to lands in controversy.
   See Folio 106 this Record for Abstract.

The complainants next introduced the following testimony and exhibits thereto.

184 Capt. MARSHALL J. MILLER, being first duly sworn, deposes and says as follows:

Direct examination by Capt. MYERS:

Q. State your name, age, residence and occupation.

A. Marshall J. Miller, am nearly 78 next month. Pilot and Commander. Live in Memphis at No. 34 South Orleans St.

Q. Please state how long you have been a Pilot and Commander of vessels on the Mississippi River and in various capacities.

A. I commenced in September 9th, 1839, from Louisville to New Orleans on the Steamboat "Paragon." From St. Louis to New Orleans and Nashville to New Orleans.

Q. In what capacity did you act at that time in '39?

A. As Pilot. Several years afterwards I was Pilot and Commander.

Q. What do you mean by Commander?

A. Captain of a steamboat.

Q. State whether or not from 1839 you have been acquainted with the channel of the River at what is known as Island No. 76 in the Mississippi River?

A. I have been acquainted with it ever since '39.

Q. When you first became pilot or Commander in '39, state on which side of the River the main channel of the Mississippi River was as to Island No. 76.

A. On the Mississippi side. The channel crossed from Cork's Point to Wehawk Plantation, then a woodyard. Afterwards the channel dropped down to Mohawk Plantation and was that way for a number of years.

Q. Please examine a map shown you which is a photo-lithographic exemplification of the survey of the river at that point on May 31, 1830, certified by Binger Herman, Commissioner of the Land Office of the United States at Washington, and state whether or not the map shows practically the position of the main channel of the Mississippi River in 1839 when you first became acquainted with it.

185 A. In '39 the bank at Cook's and along down in the bend had washed.

Q. My question is whether that practically represents the position?

A. That represents it very good. It is a very good representation of the channel of the river at that time.

Q. This map by the Land Commissioner is certified as of date January 11th, 1899. Will you please write your name on the left hand corner in the margin as identifying this map as showing the condition of the river at that time?

A. I will do so.

Q. Will you please state from 1839 what character of boats and the names of any of them, if you recollect, that you ran past that place, and whether or not that was each year up to the last date and in what capacity. Commence in '39, Captain.

A. The first boat that I went down on that way was on the "Boman Paragon" at different points from time to time. "Ellen Cookm*an*," "Calaran," "Nashville," "Ira Hill," "Bulletin No. 2" and a number of other boats. About the last boat that went down there was—I don't remember now the last boat. Those were up to three — ago. I was on the "John Simmons" when I run down there. I was on the "Gov. Allen" that run from New Orleans to here—weekly trip*t*. "Gen. Quitman" and "Cargo"—weekly trip*t*. I run the Vicksburg trade—the Memphis to Vicksburg trade and established the trade between here and Vicksburg on the "Dan'l Boone," and a number of other boats I couldn't mention. I don't recollect whether the "A. J. White" was the last boat I ran down from here to Arkansas City or not.

Q. State whether since 1839 the channel of the Mississippi River has changed from being on the Mississippi side to the Arkansas side. If it has done so, state about what year that change was made as near as you can recollect and your reasons for knowing.

186 A. I think it changed the latter part of '60 from the fact that in '65 I was on the packet running to Vicksburg and running to New Orleans. I know the channel was down on the Mississippi side and when the water would get down low the channel would go back *in* the Mississippi side. Eventually it closed it out. I disremember what year.

Q. Can you give me about the year when the channel was changed from the Mississippi side to the Arkansas side, was it in '80 or '81 or '82?

A. Somewhere along in the early part of the eighties, I think. When I was on the packet you know we run either way. We would squeeze a point to get into the landing in behind the Island and get

out until it was closed by water. Very frequently we would have to go up to Melrose Landing and other landings to get out and then come back again.

Q. Was that change of channels made in one year or two years?

A. It took several years, I think, to do it, before it quit entirely.

Q. Then, if I understand you aright, up to early in the eighties, the main channel was on the Mississippi side?

A. Yes, sir.

Q. And you could only run through on the Arkansas side in high water.

A. We would run through that way for convenience, for a short cut. Most all the boats had no business down there. They would go through that way for it would be shorter. When the water was sufficient to go up or down they went that way.

Q. But the main channel was on the Mississippi side during that time?

A. Not all that time. I am speaking of high water, these through boats wouldn't take the trouble to go down the bend. They could go through much quicker and there was no business to attend to there.

Q. That was in high water?

A. Yes, sir.

187 Q. But still the main channel was on the Mississippi side during that time. Up to about early in '80?

A. Up to about '80 it was on that side.

Cross-examination by Mr. SCOTT:

Q. When was your first trip down the river, Captain? About what date was your first trip down the river?

A. I left Louisville on the 9th day of September, 1839. Low water reached me after the middle of September?

Q. Was that in low or high water?

A. Low water. It was very low. That year it was one of the lowest waters that ever was known.

Q. That was in 1839?

A. Yes, sir, in '39 it was the lowest water we have ever had in the Mississippi River.

Q. How old were you then, Captain?

A. About seventeen. I was seventeen in August and the following September I was a pilot.

Q. Did you start out as a pilot?

A. I started out as a pilot, learned under my father and brother. My father was an old barge man.

Q. That was the beginning then of your apprenticeship? Was it?

A. That was the beginning of my career as Pilot.

Q. Are you still a pilot?

A. I haven't been doing anything for the last three years. I had La Grippe and have not been able to go on with my work.

Q. How long ago did you have the Grippe?

A. Over nine years I have had it. The last boat I was on was the "Annie Laurie."

Q. And you haven't done anything as a pilot for some years then?
A. About three years.
Q. When you speak of the channel of the river being on the Mississippi side in 1839, at that time what was the condition on the other side?
A. The water was running through it during low water.
188 Q. There was quite a considerable volume of water running through the other side, was there not, at that time?
A. In low water we didn't go at all but at a fair stage of water we would go up.
Q. In '39, at a fair stage of water, you could go on the Arkansas side without much trobule, could you not?
A. It was no trouble—light craft—boats—those days we could go up there in low water.
Q. You travelled up and down the river continuously, Captain, from '39 until within three years ago?
A. Excepting a portion of the war.
Q. And the channel of the river remained on the Mississippi side just as it was in '39 up to '81?
A. Somewhere along there.
Q. Where were you in 1846, Captain?
A. In 1846?
Q. Yes, sir.
A. I was on some of these packet runs—I don't remember now what boat it was—plying below here.
Q. Did you pass Island 76 during that year?
A. Yes, sir.
Q. Where was the channel? Where was the channel? On which side?
A. On the Mississippi side.
Q. It was on the Mississippi side in 1846?
A. Yes.
Q. You are positive of that—you remember that it was?
A. Yes, certainly.
Q. About what is the width of the channels on the two sides of the island?
A. Well, from shore to shore on the Arkansas was the widest. From the island to the Mississippi shore was the narrowest. There was a wide space between the island and the main shore, between the island and Arkansas and between the Island and Mississippi, wasn't so wide.

189 (By Capt. MYERS:)
Q. But that was deep channel?
A. Deep, yes.
Q. That was the case in 1839 that it was the wider on the Arkansas side?
A. Yes, sir.
Q. Is the change of the channel of the river in Mississippi as a rule sudden or gradual?
A. Gradual. It shapes out its course in maybe two or three sea-

sons before it changes. One or two or more seasons. What causes the change, maybe it is changed above and below and that causes these other changes. A change in the current or a cave in a bank or a filling up, I think the great cause of the change there was the change of the channel at Ozark, Ark.

(By Capt. MYERS:)

Q. When did that occur, about '80?

A. A little before that and there was a change when the cut off was made at Napoleon. That was during the war.

Q. That channel is now on the Arkansas side of the river?

A. Yes, on the Arkansas side.

Re-examination:

Q. In your cross-examination you speak of your father giving you some information in regard to this matter. How long was he a pilot or Commander on the Mississippi River before you?

A. He commenced barging before 1802 and '3. Commenced barging and building barges just below Frankfort, Ky., one mile below Frankfort. A place called Leesburg. The first barges or vessels were built there and he commenced barging down the river in 1812 during the war between England and the United States. I learned under him. He gave me all the information in regard to islands, numbers, channels and everything pertaining to the lay of the river. Also my oldest brother. I learned under them.

Q. And you learned the river at that point under your father who had been acquainted with it from 1802 and your older brother, is that so?

190 A. Yes sir.

Q. State whether or not they represented to you where the channel of the Mississippi River was in 1812 and from the time you commenced? Was it on the Mississippi side?

A. On the Mississippi side. One of the first woodyards established on the Mississippi River was just above 76 on the Mississippi side. One of the first woodyards that was built. The plantations were opened by woodyards selling wood to steamers.

Q. And your father and brother represented to you that the channel was on the Mississippi side at that time, during that period?

A. Yes, and gave me where the channel run from the time he commenced steamboating.

Recross examination:

Q. Did he ever mention whether there had been a change of the channel in the river?

A. He would tell me what change, whether there had been a change.

Q. Had there ever been a change in the channel?

A. No, sir, not in his memory and not in my brother's memory.

And further this Deponent saith not.

MARSHALL J. MILLER.

Capt. THOMAS A. WILCOX, being next duly sworn, deposes as follows:

Direct examination by Capt. MYERS:

Q. Please state your name, age, residence and occupation.

A. Residence Memphis, 129 Mill St., Memphis. Thos. W. Wilcox, age 72 and about three weeks. Occupation—Master and Pilot of steam vessels on the Mississippi River. To make it short, you can see my license.

Q. How long have you been engaged as Pilot and steamboat man on the Mississippi River between Memphis and New Orleans or at a point below Island No. 76 on the Mississippi River, and how
191 long have — known that island?

A. I have been engaged on the Ohio and Mississippi Rivers since December, 1847, but at no one particular "pint" there along.

Q. How long have you known Island 76 on the Mississippi River and where the channel was?

A. Since 1847. I was at Louisville in December and come on down the river and manipulated up and down the river ever since.

Q. Up to what date?

A. Up to the present time or about the 17th of this past May. Unfortunately I sunk a boat and had to swim ashore to wind up my career.

Q. In 1847, when you first passed Island 76, on which side of the river, of the Island was the channel, on the Mississippi or the Arkansas side?

A. It was on the Mississippi side.

Q. Since that time have you been, as pilot, passing that point every year? If not so, how often?

A. Every year but one or two years during the war and very often. I run from Arkansas River, White River to New Orleans and Vicksburg, Greenville to Arkansas City in the late years.

Q. From Memphis?

A. Yes, sir, they were about headquarters.

Q. Captain, if there had been a change in the channel of the river at 76 since 1847 from the Mississippi side to the Arkansas side, please give as near as you can the date of the change.

A. Well, the river, according to my judgment, knowledge and experience and time and time again going over the river, it was several years changing and finally locating itself. I think we quit running about 1882 and '84. We never had much business down on the Mississippi side after that.

Q. You say you quit running it between '82 and '84. What do you mean? You quit running the channel on the Mississippi side and changed to the Arkansas side?

A. Yes, that is what we term the channel on the Mississippi side.

Q. You think the change occurred in about between 1882 and '84?

A. Yes.

192 Q. You are not exactly certain about the date?

A. No, I couldn't tell the exact date, because I used to have to do a good deal of business.

Q. Was the change made in one or two years?

A. I think it was made from about 1882 to 1884, but in the fluctuation of the river, 6, 8 or 10 feet fall would change our business. If we got a little rise and had a little business there in the cotton season (which was our principal business).

Q. You mean that in high water you could run the river on the Arkansas side, but in low water you couldn't run it on the Mississippi side, is that what you mean?

A. About '84.

Q. After about '84 you had to go on Arkansas side?

A. Yes sir.

Cross-examination:

Q. Captain, in '47, when you first remember the river, which was the broader side of the river? Which side of the Island was the broader?

A. Well, to take from the Island, the Island caved in there rapidly, which was one cause of the channel going that way—that immense sand bar was the widest.

Q. The river then between the Island and Arkanssas was *the* broader than the river between — Mississippi.

A. Oh, yes, much wider.

Q. Much broader.

A. Yes.

Q. That was the case in 1847?

A. Yes.

Q. What is the width of the river there now, Captain, about?

A. I couldn't tell you exactly I helped survey and sound it very frequently in the last ten or fifteen years, but I couldn't keep up with it now.

Q. It is about the same width now that it was then, is it not?

193

A. Oh, My Lord, No. Acres and acres of it have caved in. It has widened out.

A. That is at the head?

A. It is twice or three times as wide now as it was then.

Q. At that time then, instead of all the water passing down the channel, it divided itself at the head of the Island?

A. At the time I first traveled over the river the river—the main channel—and you might say all the water—eight or nine tenths of it, went down to the left.

(By Capt. MYERS:)

Q. You mean the East?

A. The Mississippi side.

Q. But the Mississippi side was much the narrower then?

A. Yes, sir, because it formed a sort of funnel, this shape, to receive the water and would go down to a point, a wide strip of the river, between Ozark. It was very wide and flat.

Q. And gradually, then, the river, from '47, changed its channel to the Arkansas side.

Q. That has been recently done.

Q. Was that suddenly done?

A. Oh, no, several years. We had to run sometimes down the Mississippi side of the channel; maybe in a few months we would have to run on the Arkansas side.

Q. There was no sudden change at all?

A. No, sir.

Q. That is the way the channel is usually changed?

A. You can locate several different points and locations on the river and you will find one location will change very suddenly and the water will all leave and go over probably in three or four days, and that you will catch another part where the river was working along and it will take it several months or a year or two to find its way. Sudden rises out of Arkansas or Ohio will cause these things. A man has to make a great many studies about those things and the fluctuation of the water, such that I can't explain to you so you can understand, but if I was out on the river, I can catch it. It
194 is mapped out in my head better than I can map it here.

Re-examination:

Q. Please examine the plat here shown you, which is a photo lithographic exemplification of Township 21, R. 8 West, Choctaw District of Mississippi, certified to by Binger Herman, Land Commissioner of the United States at Washington, and state whether or not that exemplification shows about the status of the channel of the Mississippi River in 1847 when you first navigated it at that point, and as it continued up to early in the eighties—1881 to 1884.

A. Well, this is a very good representation. I am pretty tolerably familiar with those spaces in there, with those strips and parcels of land in there at those places and clean on around here, but there has been a great many, not sudden changes, slow changes in the channel and the movements of the river here in this location. There's three channels here now. This, when the water gets a little low, you can walk across it. I navigated this and did business around that bend with barges and steamboats as long as there was any water in it, and very often we could go in up here, and take on a cargo of cotton and go back. But, to the best of my recollection, the channel left there between '82 and '84 and went over on the right side.

Q. Please write your name on the margin of this map as showing the condition of the river at that time.

A. I will do so.

Q. It went over on the right to the Arkansas side?

A. Yes, sir. Simply from the fact that there used to be a considerable plantation on there, a man that I knew well, lived there. A man named Rouse lived there. There was at one time a small horse gin on there and several negro cabins and an overseer's place. I don't know at that time who it belonged to. Now this improved
195 property stood near the head of the Island but that is all caved in and gone. The channel runs in down to the right of that now.

Q. You mean to the right, going down the river?

A. There's three channels. One goes down close on the head of that, down there a little piece and then out a little. Another one pulls out about midway and goes out in this direction. Another one pulls right down Cork's point and over there and back again to Cork's point and falls in down towards Kentucky Landing.

(Witness referred to map while answering.)

Q. In cross-examination you say that in 1847 the space between the Island and the Arkansas side was wider than that between the Island and the Mississippi side.

A. Oh, yes.

Q. Now, at that time, whilst the space was wider, is it or not a fact that the channel was on the Mississippi side?

A. The channel was undoubtedly on the Mississippi side.

Q. Then, if I understand you aright, it didn't make any difference between the width of the distance between the shore and the Island, but the question is the depth of the water.

A. That is the question. I was going to relate that. In many places in the Mississippi River it is funnel shaped, a wide space up here and the water comes in a narrow space to the bank and leaves a wide bar, it is a deep bar or a shoal bar.

Q. How was that space between the Arkansas side at that time and the Island? If I understand you right, you say you could nearly walk across it sometimes, is that so, between the Arkansas shore and the Island?

A. Yes, sir, I have seen it so lo*t* I have seen cattle and mules and horses and things—they might make a lick or two to swim—I saw stock of various kinds fording the river from the Arkansas shore to the Island. Saw it several times.

196 Q. At the same time you were running steamboats on the Mississippi side?

A. Oh, yes.

And further this deponent saith not.

THOS. W. WILCOX.

Capt. A. E. DRINKWATER, being duly sworn, next deposed as follows:

Direct examination:

Q. Please state your name, age, residence and occupation.

A. Name—A. E. Drinkwater, age 62, No. 90 Madison, Memphis. Occupation Master and Pilot of steam vessels.

Q. How long have you been engaged as Pilot and Master of vessels on the Mississippi River between Memphis and points below, passing Island 76 in the Mississippi River?

A. Since 1855.

Q. How continuously have you been in that business?

A. Well, pretty near continuously, as is usually the case with river men. Sometimes off of that part of the river for a year or two and sometimes—seldom longer than that.

Q. In 1855 when you first navigated that river as pilot, passing Island 76, where was the main channel of the Mississippi River, on the Mississippi side or the Arkansas side of that river?

A. On the Mississippi side, sir.

Q. If there has ben any change in the channel of the Mississippi River at that point from the Mississippi side to the Arkansas side, please state, as near as you can, when that change occurred?

A. There was kind of a lingering change I think. There has been water on both sides of the Island in the past few years. At times the best water has been on one side and at other times on the other.

Q. When you say the last few years, how many years do you mean? how far back?

197 A. About two years ago, I think. Three years anyway.

Q. In your recollection when did the channel change in low water for all boats from the Mississippi side to the Arkansas side?

A. Well, it was about '82 I think the channel was usually navigated on the Arkansas side for heavy boats.

Q. Before that, the channel was on the Mississippi side?

A. Alternately it was, yes, sir.

Q. Do you mean to say that in high water boats could run on the Arkansas side, but in low water, before that time, they could run on the Mississippi side?

A. Yes, sir.

Q. Did that change occur in one year or two years?

A. No sir, that occurred in I suppose over a part of ten or fifteen years that was the condition of that part of the river.

Q. You mean ten or fifteen years back from this time?

A. Yes, sir.

Q. The channel is now on the Arkansas side? Isn't it?

A. Yes, sir.

Q. Are you thoroughly acquainted with that part of the river since 1847?

A. Not '47.

Q. '55 I mean?

A. Yes sir.

Q. And you know what you are talking about?

A. Yes sir.

Cross-examination:

Q. Are you still a pilot?

A. Yes, sir.

Q. Running on the river now?

A. I was last week. I am not this week.

198 Re-examination:

Q. Please examine the plat here shown you—photo-lithographic plat of Township 21, R. 8 West, Choctaw Division of Mississippi, certified to by Binger Herman, Commissioner at Washington, and

state whether or not that shows the condition of the main channel of the Mississippi River when you first went on the river in 1855?

A. Yes, sir that is similar. Of course there are little excavations and cuttings, the bank has changed appearance gradually but that has a general outline of the appearance at that time.

And further saith not.

A. E. DRINKWATER.

199 *2nd Deposition of*

Captain THOMAS W. WILCOX being first duly sworn testifies as follows:

Direct examination by D. E. MYERS:

Q. 1. State whether or not you are the same Captain Thomas W. Wilcox who gave a former deposition in this case?

Ans. I suppose I am but I don't recollect the dates.

Q. 2. I did not ask you about the dates. Are you the same Capt. Thomas W. Wilcox that gave the former deposition in this case in regard to your knowledge of the channel of the Mississippi River and in regard to a certain Island, Island No. 76 in the Mississippi River south of Memphis?

Ans. Yes, sir, I suppose I am. I never gave but one deposition in the case.

Q. 3. Was that deposition in this case of Moore & McFerren against R. J. McGuire and others in the Circuit Court of the United States at Little Rock?

Ans. Yes, sir I was.

Q. 4. In taking that deposition the complainant either overlooked asking you, or he did ask you and the stenographer failed to get it, the question as to whether or not you ever lived at Napoleon, Ark. Now please state, whether or not you ever lived or resided at Napoleon, Arkansas, if so, between what dates, also state how far Napoleon, Ark., is above Island No. 76, also please state whether or not from actual knowledge whilst you lived at Napoleon Ark., you know that the main channel of the Mississippi River was on the Mississippi or on the east side of Island 76.

Answer each paragraph of this question fully.

Ans. I first went there to reside in 1885, the last part of August. I lived there for a number of years, bought property there, done business there pilotted boats on the river; I lived there between 1855 and 1862. It was my home for a number of years. Well it is really between twelve and fourten miles from Napoleon to Island 76. It used to be exactly twelve miles from east Napoleon to Cork
200 Point, now it is a little further. There has been changes in the river channel since then. Now it is about 1½ miles further, or two miles further. A big sand bar there makes the distance wider and it would measure about 1½ miles across it to the east side of Island 76.

Yes, the main channel is on the east side of Island seventy six, it was on the east side. I pilotted there and knew it from actual knowl-

edge, I was pilotting there some years before the channel changed. I know it from experience and observation, trips up and down the river, running steam boats, etc. I always pulled out a little above Cork Point and crossed over to the head of the Island.

Q. 5. Please state whether during the time you resided and did business at Napoleon, Arkansas you had any barges of coal or other products to get aloose from you, and whether or not they stranded it in the chute west of the island or between the Arkansas Bank and Island 76.

Ans. Yes sir, during my stay there I handled several hundred barges of coal and other various stuff annually, but at this occasion that I speak of is what we term a fuel flat. It had several hundred tons of this cheap nut coal on it, and occasionally somebody would come around and steal the line off your barges it was that my barges got aloose, and drifted down to the head of the island and lodged there, and they were picked up by an old man named Roberson, who lived on the Ozark Island right above Col. Patterson's place. The old man came up to notify me about the barges, he was fully aware nobody else had any barges near there except myself, not nearer than Memphis, and I went down with him, and he wanted to charge an enormous price for catching it and putting a line on it. It was already held, because it drifted in towards the bank. A good many instances of that sort takes place over there that we have to contend with.

Q. 6. Where was the channel at that time, was it on the east side of the island or the west side?

201 Ans. It was down to the left on the east side, the Mississippi side.

Q. 7. State where this coal barge had lodged. Was it on the short of the Arkansas side?

Ans. Yes, it has cut into the head of the chute, like, and lodged.

Q. 8. Why did it lodge there?

Ans. Because there wasn't water enough for it to go through on the Arkansas side at that time, whereas, there was water enough for it to have gone through on the Mississippi side if it had drifted that way. Yes there was the main channel on the Mississippi side and it would have gone on down.

Q. 9. While you lived at Napoleon, Ark., from 1855 to 1862, about how often did you see the channel of the Mississippi River at Island 76?

Ans. I couldn't tell how often, but frequently. Numbers of times.

Q. 10. Was the main channel of the river on the Mississippi side during this entire time or not?

Ans. Yes sir. It was. And I think to the best of my recollection that the channel of the Mississippi River was down by Neblett also.

Q 11. Was the channel that you speak of as being down by Neblett, was that the Mississippi side or the Arkansas side?

Ans. It was the Mississippi side. East side of the island.

Cross-examination waived by A. Y. Scott for defendants.

And further deponent saith not.

THOS. W. WILCOX.

Indorsed: Opened & published by rule of Court, Dec. 11, 1901. W. P. Feild, Clerk.

202 Ben G. Meeks, a witness on behalf of the complainants, being first duly sworn, deposes in answer to the interrogatories propounded him as follows, to-wit:

Int. 1. State your name, age, occupation and place of residence.

A. My name is Ben G. Meeks; age 29 years; occupation Clerk of Desha County, Arkansas, and residence Arkansas City, Arkansas.

Int. 2. What official position do you occupy now, and how long have you occupied it?

A. I occupy the official position of Clerk of Desha County, qualified in November, 1900.

Int. 3. If you answer, to the last interrogatory, that you are the Clerk of the County and Circuit Courts of Desha County Arkansas, state whether or not you have the assessment books and tax books of said county in your custody as such officer.

A. As such officer as Clerk of Desha County, Arkansas, would say that I have the assessment books and tax books of said Desha County in my custody.

Int. 4. Please state, from said books—assessment and tax books, or both—in your custody from what date the following lands have been assessed for taxes to various parties in Desha County, Arkansas, giving the earliest date, and down to the present time, to-wit:

N E Frl. ¼ of Sec. 35,.....	15.08	acres
S E " ¼ " " 35,.....	79.04	"
Total Frl. Section..	94.12	"

in Township 11 South, Range 1 East, of the Fifth Principal Meridan.

North Frl. ½ of Sec. 36,....	82.72	acres
E. ½ of S W ¼ " 36,....	80.00	"
S E Frl. ¼ " 36,....	26.96	"
W. ½ of S W of " 36,....	80.00	"
Total Frl. " 36,....	269.68	"

in Township 11 South, Range 1 East, of the Fifth Principal Meridan.

203 Also Frl. Section 1 in Township 12 South, Range 1 East, composed as follows:

N E Frl. ¼ Sec. 1, ...	70.89	acres
N W Frl. ¼ " 1, ...	137.38	"
S W " ¼ " 1, ...	10.56	"
Total Frl. Sec.	155.83	"

Also the following Frl. Sec. 2, Township 12 South, Range 2 East, composed as follows:

N.	Frl. ½ of N E Frl ¼, Sec. 2	65.14	acres
S.	Frl. ¼ and S ½ of N E Frl. ¼	160.09	"
S. W	" ¼ of Sec. 2	35.92	"
	Total Frl. Sec. 2	261.15	"

The above property comprising Island 76 in the Mississippi River.

A. I have examined the tax and assessment books in my office and find that the tracts of land set out in the Interrogatory have been regularly listed and taxed from the years 1865 to present date. When I say taxed, I mean placed on the tax books for each year. I find part of the tracts forfeited and sold for taxes to the State for tax 1871-2-3-4-5 & 6—yet they were listed in the tax books for each year.

Int. 5. Please state anything else you may know of interest in this case touching the date at which said lands were first listed for taxation in Desha County, Arkansas, and showing that they have been continuously listed for taxation in said county, or placed on the tax books up to the present time.

A. I do not find in my office any tax or assessment records prior to 1865; I understand that some of the records prior to that date were lost or destroyed in moving the records from the old county site by heavy waters, and cannot testify as to the tax condition of these lands prior to that time. I further certify that as to Interrogatory 5th, Mrs. Sallie Murphy paid taxes on the land described therein from 1884 to 1887, the time sold to Moore & McFerrin, who paid taxes thereon to the present date.

And further deponent sayeth not.

(Signed) BEN G. MEEKS.

Endorsed: Filed May 10, 1902. W. P. Feild, Clerk.

204 E. H. NALL being first duly sworn deposes as follows:—

Direct examination by D. E. MYERS:

Int. 1. State your name, age, residence and occupation, and how long you have been engaged in the office you now hold if you hold one? State your official position.

A. E. H. Nall; 52; Jackson, Mississippi; State Land Commissioner. I have occupied that position since July 2nd, 1898.

Int. 2. State whether or not in your official position you have in your custody and control any of the books appertaining to the assessment and collection of taxes, and disposition and sale of lands in the State of Mississippi? State generally what books they are.

A. The Redemption Land Books were transferred to this office by an Act of the Legislature on the 26th of February 1902. The Forfeited Land Sales Books have been in this office since 1892. The Forfeited Tax Books originated in this office in 1892 by Act of the Legislature, having passed the date of redemption. The Act is as follows: "There shall be a land-office, to be kept at the capitol by the land-commissioner, wherein shall be deposited the records of the surveyor-general's office turned over to this state by the United States,

all field-notes, plats, and maps of surveys of lands belonging to the office of swamp land commissioner, and all other papers, documents, and records which ought to be kept in the land office; and all such records now in the possession of any other officer shall be delivered to the land-commissioner." Code of 1892 of Mississippi 2558.

Int. 3. After that time what other books were transferred to your office?

A. State Land Records and Levee Land Records, and all other land records except Assessment Rolls now in the Auditor's office be transferred to the office of the Land Commissioner, and be hereafter held by the Land Commissioner instead of the Auditor, as appears by Section 1, Act of the Legislature of Mississippi, approved
205 February 26, 1902.

Int. 4. What date were they turned over to your office?

A. About February 26, 1902.

Int. 5. You never got the assessment roll?

A. No sir.

Int. 6. Where did that remain?

A. In the Auditor's office.

Int. 7. Please turn to your records and state when Island 76 in the Mississippi River first appeared upon the tax books of the State of Mississippi, and give the name of the book in which it is in.

A. All of Section 36, Township 21, Range 8 West, and all of fractional Section 27, Township 21, Range 8 West, was assessed in 1881 to unknown parties, appears by the records to have been sold March 6th, 1882 for the delinquent taxes due thereon for the fiscal year 1881.

Int. 8. Please give to the stenographer a verbatim copy of that entry as it appears on your records.

A. "To whom assessed, unknown; when sold to state, 6th of March, 1882; all of Section 36, Township 21, Range 8 West; all of fractional Section 37, Township 21, Range 8 West—824 acres. Printer's fee, 20¢; State tax, $12.36; County tax, $74.16; Sheriff's fees $1.00; Pencil memorandum Island No. 76. When redeemed and purchased from the State, 28th of September, 1891; J. T. Currie and M. A. Hull."

"To whom assessed, unknown; when sold to state, 6th of March, 1882; all fractional Section 37, Township 21, Range 8 West, 185 acres. Printer's fees 20¢; State tax, $2.88; County tax, $17.28; Sheriff's fee, $1.00; in brackets in pencil Island No. 76; when redeemed or purchased from the State, 28th of October 1891; J. T. Currie and M. A. Hull." The above appears on State and Levee Lands, Bolivar County, page 33.

Int. 9. What next occurred in regard to these lands embraced in Island 76, as appears from the records in your office, giving the book?

206 A. Register of State Deeds in the Levee District. Register of deed made by the Auditor, the same under requirements of Chapter 10 of Campbell's Code of 1880.

Int. 10. Please give a verbatim copy of the record as it appears.

A. "Date of sale to the State, March 6th, 1882; date of purchase

from the State, September 28th, 1891; name of purchaser, J. T. Currie and M. A. Hull. Description of land purchased, land is in Arkansas, marked in red ink opposite all Section 36, Township 21, Range 8 West, 824 acres. Treasurer's fee for registering 50¢; Auditor's fee for making deed, 55¢; amount of Auditor's, Sheriff's and Clerk's commissions, $13.95; Sheriff's cost of sale, $1.00; Clerk's fee for recording land sold to State, 10¢; State tax, general fund, $24.22; State tax, school fund, $3.26; the County tax $110.48. Cancelled November 23rd, 1892, and State tax and Int. refunded, marked in red ink; Total amount, $154.06."

"Date of sale to State, March 6th, 1882; date of purchase from the State, October 26th, 1891; name of purchaser, J. T. Currie and M. A. Hull. All fractional (land in Arkansas, marked in red ink) Section 37, Township 21, Range 8 West, 185 acres. Treasurer's fee for registery, 50¢; Auditor's fee for making deed, 55¢; amount of Auditor's, Sheriff's and Clerk's commissions, $1.70. Sheriff's cost sale, $1.00; Clerk's fee for recording the land sold to the State, 10¢; State tax, general fund, $6.23; State tax, school fund, 74¢; County tax, $27.90. Cancelled November 23rd, 1892, and state tax and Int. refunded, written on line below the description of the land in red ink; total $38.72."

Int. 11. From the record—the last quotation you gave in red ink—you state is on the line below?

A. Yes sir.

Int. 12. Is there any doubt from the record that that is merely a clerical error being put below the line opposite the description?

A. It appears to me that it is a clerical error.

207 Int. 13. Does it not appear from the face of the error there that that last quotation in red ink was intended to be put opposite fractional Section 37, Township 21, Range 8 West? State how that would seem?

A. I think so.

Int. 14. You spoke of the last book read from being one from the Auditor's office. Is that one of the books turned over to you by the recent Act of the Legislature from the Auditor's office?

A. Yes sir.

Cross-examination by A. Y. Scott:

X Int. 1. The assessment rolls are not in your office are they, Mr. Nall?

A. No sir.

X Int. 2. You don't know when Section 36, Township 21, Range 8 West, and Section 37, Township 21, Range 8 West, was first assessed for taxes by Bolivar County, do you?

A. No, sir. I only know by the records.

X Int. 3. The first record which you read from in your foregoing deposition, which you refer to as tax sale made on March 6th, 1882 for the delinquent taxes due thereon for the fiscal year 1881, is the record of the sales to the state certified by the sheriff and tax collector of Bolivar County to your office for the fiscal year 1881, is it not?

A. Yes sir, that is the record.

X Int. 4. And that reports merely the sales to the state for the delinquent taxes due the state and county for the year 1881, and has no reference to any prior taxes one way or the other has it?

A. That question I cannot answer. I don't know. I can only go as far as my records show. There may be some old books in the archives. There may and there may not be.

X Int. 5. In other words, there may have been other assessments of taxes of Sections 36 and 37, Township 21, Range 8 West, of which you have no knowledge from the foregoing record?

208 A. There may be.

X Int. 6. Now, Mr. Nall, in referring to the second record from which you read, known as Register of State Deeds in the Levee District, state whether or not it is supposed to be the record of all deeds, that is, the register of all deeds made by the Auditor of Public Accounts to lands purchased from the State by private individuals and which had prior to that time been forfeited to the state under taxes in the Levee District of the state.

A. Yes, it is supposed to contain it all.

X Int. 7. Have you any way of ascertaining when the entries were made in this Register of State Deeds above referred to?

A. Only what the records show.

X Int. 8. State whether or not the entries referring to all Section 36, Township 21, Range 8 West, appears to have been written in said book by the same handwriting or not?

A. I believe that the date of sale to the state, the date of purchase from the state and the name of the parties purchasing, and the description of the land is in one handwriting. The annotations in red ink are in another hand.

X Int. 9. State whether or not exactly the same condition applies to all of fractional Section 37, Township 21, Range 8 West?

A. It does, I believe.

X Int. 10. State, Mr. Nall, whether or not it is a fact that the entries in regard to all of Section 36, Township 21, Range 8 West, which refer to the date of sale to the state, date of purchase from the state, name of purchaser, description of land, number of acres, fees, taxes and total amount, does not appear in black ink on said register, and appear to be in the same handwriting?

A. It does.

X Int. 11. State whether or not that the notation "Land is in Arkansas," and "Cancelled November 23rd, 1892 and State tax and Int. refunded" does not appear to be in red ink, and whether these two entries in red ink do not appear to be in the same hand-

209 writing and in a different handwriting from the entries in black in- above referred to?

A. It does.

X Int. 12. State Mr. Nall, whether or not from the record as above indicated it appears that the entries in red ink were made subsequent to the entries in black ink?

A. I do not know. I cannot tell.

Redirect examination by COUNSEL FOR COMPLAINANTS:

Int. 1. In your cross-examination you have stated in substance that appearing on the record of State Deeds of the State of Missis-

sippi in regard to Sections 36 and 37, Township 21, Range 8 West, a certain portion of the entries, to-wit: that in black ink appears in one handwriting and the portion, to-wit, all of Section 36 and fractional Section 37 in Township 21, Range 8 West appears in red ink as follows: "Land is in Arkansas." The same appearing opposite each section and opposite all of section 36 is written in red ink the following: "Cancelled November 23rd, 1892 and State tax and Int. refunded," and opposite fractional Section 37 is the following in red ink "Cancelled November 23rd, 1892, and State Tax and Int. refunded." You state that these entries in regard to these lands which are in red ink are in a different handwriting from that in black ink. Now state in whose handwriting these red ink entries appear?

A. Of course, I don't know. I cannot tell.

Int. 2. State whether or not in your opinion it is in the handwriting of W. D. Holder, the then Deputy Auditor of Public Accounts under W. W. Stone, Auditor?

A. It resembles Col. Holder's handwriting.

Int. 3. Have you seen his handwriting often?

A. No, sir.

Int. 4. Col. W. D. Holder was the regular deputy in the office at that time—of W. W. Stone, Auditor?

210 A. Yes sir.

Int. 5. Is that one of the books you received under Act of the Legislature from the Auditor's office?

A. Yes sir.

Int. 6. At that date, November 23rd, 1892, that book was in the office of and under the custody of the Auditor of Public Accounts?

A. Yes sir.

Int. 7. You have stated in your cross-examination that as to the date when these sections 36 and 37, Township 21, Range 8 West first appeared on the records in your custody was for the taxes for 1882 for the fiscal year 1881?

A. For delinquent taxes due thereon for the fiscal year 1881.

Int. 8. And you have stated that they might have appeared on the records prior to that time. Now please examine these records in your office and state whether these lands prior appeared on your records back as far as 1862?

A. I have examined the books in this office from 1882 back to 1862, and can find nothing relative to these lands prior to loss for the fiscal year 1881.

Recross-examination by Mr. A. Y. SCOTT:

Int. 1. By your answer, Mr. Nall, to your last question you meant to say that you have examined the tax sales book to 1862, and do not find that the land has been sold to the state for taxes prior to 1882 for the fiscal year 1881.

A. Yes sir.

Int. 2. You do not mean to say that there is no other records of this office relative to that property do you?

A. No sir. If there are any other records I have no knowledge of them.

Int. 3. There are plats and field-notes relative to Section 36, Township 21, Range 8 West, which show that the property is in the State of Mississippi, is there not?

211 A. Yes sir.

Complainant excepts to the foregoing question and answer thereto as incompetent in this, that it calls for a mixed question of law and facts, and second because the records themselves are the best evidence.

Int. 4. If the taxes had been regularly paid upon Section 36, Township 21, Range 8 West, and upon all fractional Section 37, Township 21, Range 8 West prior to the sale of 1882 for the taxes of the fiscal year 1881, they would not have appeared on the records of your office?

A. No. Sometimes when the taxes are paid and the tax receipts are shown the lands are stricken from the records.

Int. 5. You mean to say by that statement that *that* sometimes where taxes are paid the sheriff in error sells some for taxes and reports them as delinquent to this office, and upon proof that the sheriff was in error in so reporting the land is then stricken from the roll.

A. Yes sir.

Redirect examination by D. E. MYERS:

Int. 1. Then as a matter of fact lands do not appear on the records in your office where the taxes have been paid and in error reported to your office and actually appeared upon your records and afterwards stricken from the records. Is that not so?

A. Yes, on proper evidence that the taxes have been paid.

Further dependent saith not.

E. H. NALL,
Land Commissioner.

Indorsed: Filed May 28, 1902. W. P. Feild, Clerk.

212 W. Q. COLE, a witness on behalf of Complainants, after being duly sworn, testified as follows:

Q. State your name, age, residence and occupation?

A. W. Q. Cole; 45 years of age; Jackson, Mississippi; Auditor of Public Acounts of the State of Mississippi.

Q. What official position do you hold at this time and how long have you so held it?

A. I am Auditor of Public Accounts of the State of Mississippi, and have been since the 15th of January, 1900.

Q. As Auditor of Public Accounts have you or not in your custody and under your control the books relating to the assessment, collection of taxes and redemption of taxes, and other papers relating to lands of the State of Mississippi in your office; If not, state what particular records you have in your office.

A. I have the assessment rolls of lands from 1883 to 1900. The records of redemption of lands were moved from my office to that

of Land Commissioner on the 6th of March, 1902, under an Act of the last Legislature.

Q. Have you not, or should you not have, in your custody the assessment rolls from the various counties in the State of Mississippi prior to 1883 running back for many years?

A. The records should be in this office from the organization of the State to date, but from lack of room the older records were several years ago stored in the old library above the Supreme Court room. In 1896, or about that time, the building was considered unsafe and the old records stored there, or many of them, were ordered by the Supreme Court and the Governor to rooms in the penitentiary. When they began to tear down the old penitentiary for the purpose of erecting the new capitol on that site, the records were moved to the lower hallway of the present capitol. Whether lost in moving or whether still in the lower hallway I am unable to say.

I have been unable to find all of the records. In fact, have
213 been unable to find but very few of the land records back of 1883.

Q. State whether you have the assessment roll of the County of Bolivar, Mississippi, for 1876.

A. I have.

Q. By the way just here tell us how these assessment rolls come into the possession of the Auditor of Public Accounts. Who sends them?

A. They are sent to the Auditor by the Chancery Clerks of the various counties after having been examined and approved by the Board of Supervisors.

Q. These purport to be correct assessments of all the rolls of each county and township?

A. Yes sir.

Q. Please examine the assessment roll for 1876 for Bolivar County, and state whether or not Island 76 appears thereon as assessed?

A. It does not. No record of Island 76 on it.

Q. State whether or not there is any record under the assessment roll of 1876 of Section 36 and fractional Section 37, Township 21, Range 8 West.

A. There is no record of such sections.

Q. After 1876 when was the next assessment roll sent in from Bolivar County?

A. That I am unable to say, as I don't know what other years the lands were assessed in that County.

Q. The assessments were usually every two or four years were they not?

A. Usually. Yes sir.

Q. Have you been able to find the assessment rolls subsequent to 1876, 1879, 1880 or 1881 of Bolivar County?

A. I have the assessment rolls for 1876, and the next in my possession is 1883. I have been unable to locate any for the intervening years.

Q. Are you still searching for the assessment rolls of Bolivar County subsequent to 1876 and prior to 1883?

214 A. I am having those in the lower hallway assorted for all counties.

Q. State under what assessment roll Island 76 in the Mississippi River, as far as the books in your possession show, was first assessed in Mississippi for taxation?

A. I find it assessed in 1883. Do not find it in 1876.

Q. Please examine the assessment roll for 1883, and give a verbatim copy of the assessment of Section 36 and fractional section 37, Township 21 North, Range 8 West.

A. "Owners name, State; division of Section, all 36, Township 21, Range 8 West; 824 acres; value per acre $1.00; total value of land held by State for taxes, $824.00."

"Owner's name, State; division of Section, all fractional section 37, Township 21, Range 8 West, 185 acres at $1.00, $185.00.

Q. When did the next assessment of land for taxes in Bolivar County, Mississippi, appear, the date?

A. 1887 is the next I have.

Q. Please give the verbatim assessment as it appears for 1887.

A. "For 1887, the State is again assessed with all of Section 36 and all of Section 37, Township 21 North, Range 8 West; acreage, the same."

Q. At what date was the next assessment roll of Bolivar County, Mississippi?

A. The next in my possession is 1889 on which the assessment appears exactly as it does in 1887, acreage and all.

Q. Have you another one?

A. Yes, sir, 1892, the one following 1889. "1892, Owner's name, Currie & Hull; all of Sections 36 and 37, Township 21, Range 8 West, 824 acres in Section 36 and 185 acres in Section 37."

Q. Have you any other assessments?

A. Yes sir, 1896. In 1896 the State is assessed with all of Sections 36 and 37, Township 21, Range 8 West.

Q. Please state from the records in your office what was done in regard to that property in the way of taxes for the year 1891
215 or 1892 with reference to refunding the purchase money to any one and to whom, as purchasers, all of Sections 36 and 37, Township 21 North, Range 8 West, and state all the facts in connection with it.

A. Disbursement Register for the year 1892 shows on page 247, warrant No. 4476, was drawn in favor of J. T. Currie and M. A. Hull for $58.20, and the voucher shows that it was the State's proportion of the purchase money refunded.

Q. Have you the original deeds in your custody made by the State of Mississippi to Currie & Hull?

A. Yes sir; they are filed as part of voucher No. 4476.

Q. Will you please file as "Exhibit A" to this your deposition a certified copy of that original deed as cancelled to Section 36, Township 21 North, Range 8 West, containing 824 acres, when the money was refunded together with all of the endorsements thereon?

A. I will file it herewith marked "Exhibit A."

Q. What section does this deed embrace?

A. Section 36.

Q. Will you please file certified copy with all the endorsements thereon of the other original deed from the State to Currie & Hull all fractional Section 37, Township 21 North, Range 8 West, 185 acres, as "Exhibit B."

A. I will file it herewith, marked "Exhibit B."

Q. Do these Exhibits A and B cover what is known as Island 76 in the Mississippi River?

A. That I do not know. I have no recor-s here that would give me that information.

Q. You have stated that you had the original voucher No. 4476 showing the refund of the purchase money to J. F. Currie & M. A. Hull, will you please file a certified copy of that original voucher and make it "Exhibit C" to your deposition?

A. I will file it herewith.

216 Q. Does anything appear on any of the assessment rolls in your office that you have referred to that Sections 26 and 27 Township 21 North, Range 8 West, was the Island 76 in the Mississippi River.

A. Nothing on the land assessments at all.

Q. Have you in your office an opinion by the Hon. Frank Johnston, the Attorney General of Mississippi, to the Hon. W. W. Stone, the Auditor of Public Accounts of the State of Mississippi bearing date of April 20th, 1894, in regard to the ownership of Sections 36 and fractional Section 37, Township 21 North, Range 8 West, being Island 76, as to the cancellation of the sale of said Sections and said Island 76 to Currie & Hull in 1891? If so, will you please file a certified copy of that opinion of the Attorney General to the Auditor, and mark it "Exhibit D" to your deposition?

A. I have a letter from Attorney General Johnston to W. W. Stone, Auditor, dated April 20th, 1894, a certified copy of which I file herewith as "Exhibit D."

Q. Said letter refers to said lands as Island 76, and the same bought by Currie & Hull?

A. Yes.

Q. State whether or not from the records in your office you can find whether the State of Mississippi has ever received prior to 1900 any taxes on Sections 36 and 37, Township 21 North, Ran*eg* 8 West, except those refunded for the erroneous sale in 1892, on November 23rd, to Currie & Hull?

A. Our records do not show any taxes collected.

Cross-examination by A. Y. Scott:

Q. Will you please file with your deposition a copy of the assessment of all section 36, Township 21, Range 8 West, in Bolivar County, and all of fractional Section 37, Township 21, Range 8 West in Bolivar County from every assessment roll in your possession from and including 1883 up to and including the assessment roll of 1900, marking same as "Exhibit E."

217 A. I will file it.

Q. In 1883, I believe, you stated, that the land appeared

assessed to the State continually from that time until the assessment of 1892, and subsequently from 1892 until 1900 it appears assessed to the State?

A. Yes in 1892, it was assessed to Currie & Hull and the other times to the State.

Q. So then the only years during that time upon which the State prior to 1900 should have received any taxes would have been for the year 1892?

A. Yes sir, and it would not have received taxes for 1892 if Currie & Hull had knowledge of failure of title prior to tax collection time, (as they evidently had by their refund being made in the early part of tax collecting time for 1892).

Q. You have filed with your deposition as "Exhibit D" thereto a certified copy of a letter of Frank Johnston, Attorney General, to W. W. Stone, Auditor of Public Accounts. Please state where the original of this opinion, being the instrument I now hand you, was obtained by you?

A. The first time I saw it, it was handed to me by Col. Myers this morning.

Q. State whether or not there is any notation on said opinion which would identify same as part of the record of your office?

A. No there is nothing.

Q. State whether or not the instruments filed as Exhibits A, B, and C. to your deposition are all the instruments in your office relative to the refund to Currie & Hull, excepting the notations on the Disbursement Register referred to in your deposition?

A. It is the only record that I have any knowledge of except the ledger and journal which contains a copy of what is shown on the Disbursement Register.

Q. Please file with your deposition as "Exhibit F" the jacket containing the Auditor's warrant and deeds filed as an exhibit to your deposition above.

A. I file same as "Exhibit F."

218 Redirect examination by D. E. Myers:

Q. On Exhibit C filed with your deposition I notice that disbursement was approved by J. M. Stone and T. M. Miller, what official positions did J. M. Stone and T. M. Miller respectively occupy at the date thereof?

A. J. M. Stone was Governor and T. M. Miller was Attorney General.

Q. In your cross-examination you have stated that nothing appears on "Exhibit D" to your deposition showing that it officially belonged to your office. Please examine said original again and state whether or not it is not addressed to the Hon. W. W. Stone, Auditor of Public Accounts.

A. I understood counsel that he meant any "notation" thereon showing that it was one of the records of the office. The letter is addressed to Hon. W. W. Stone, Auditor of Public Accounts.

—. ——.

A. Yes sir.

Q. Frank Johnstone was then Attorney General for the State of Mississippi.

A. Yes sir, I think so.

Q. State in whose handwriting from start to finish said original opinion is of date April 20th, 1894?

A. To the best of my knowledge and belief it is that of Attorney General Johnston.

Q. Are you not well acquainted with Gen. Johnston's handwriting?

A. Yes sir.

Q. Then being addressed by the Attorney General to the Auditor on official business would not it properly belong in the Auditor's office?

A. It should have been here, yes sir.

Q. Under the due course of business are you not satisfied that it was originally here?

A. Yes, I think it was originally here.

Q. You have stated that Mr. Myers handed you that original opinion to-day, if you recollect state in short what he said to you when he handed you this opinion?

219 A. When you handed it to me this morning you said that you had either received it from A. H. Stone, or one Mr. Murphy, and that it was a copy. Whereupon I remarked to you that I thought it was Capt. Johnston's handwriting.

Further deponent saith not.

(Signed) W. Q. COLE.

220 EXHIBIT "A" TO W. Q. COLE'S DEPOSITION.

THE STATE OF MISSISSIPPI:

This indenture, made and Entered into this the 28th day of September, A. D. 1891, between the State of Mississippi, of the first part, and J. T. Currie and M. A. Hull of the second part, witnesseth—

That whereas, there was sold on the 6th day of March, A. D. 1882 to the State of Mississippi, for Taxes due the State, the following tract of Land, to-wit:

Division of section.	Section.	Township.	Range.	Acres.
All.....	26	21	8 W.	824

Situated in Bolivar County, containing Eight Hundred & Twenty-four Acres, more or less.

And whereas, the said party of the second part desires to purchase said tract of land under the provisions of the laws of Mississippi, in such cases provided, and has this day applied to purchase the said land and paid the sum One Hundred & Fifty-four Dollars, and six Cents.

And in consideration of the premises, and the amount paid to the State of Mississippi, in accordance with the Statutes of the State,

the State of Mississippi has this day bargained, sold and conveyed, and by these presents does bargain, sell and convey unto the said party of the second part, their heirs and assigns forever, the aforesaid, *the aforesaid* tract of land as above described, to have and to hold the same to said party of the second part, their heirs and assigns forever. The State of Mississippi hereby warrants the title to said lands according to the Statute in such cases made and provided, and not otherwise.

221 In testimony whereof, these presents are signed, sealed and delivered, in the name of the State of Mississippi, by W. W. Stone, Auditor of Public Accounts, who has hereunto subscribed his name and affixed his seal of office, this the 28th day of September, A. D. 1891.

(Signed) W. W. STONE,
[SEAL.] *Auditor of Public Accounts.*

(Endorsements on Back.)

Date September 28th, 1891.
County Bolivar.
Purchaser, J. T. Currie, M. A. Hull.

Treasurer's Fee	$ .50
Auditor's Fee	.55
Commissions	13.95
Sheriff's Costs sale	1.00
Clerk's Fees	.10
State Tax Gen. Fund	24.22
State Tax School Fund	3.26
County Tax	110.48
Total	$154.06
	110.48
	43.58

Registered:

J. J. EVANS,
State Treasurer.

Land lies in Ark.
Cancelled Nov. 23rd, 1892, & State Tax and int. refunded.

W. W. STONE,
Auditor.

Filed for Record Nov. 2nd, 1891, at 1.40 o'clock P. M.

T. R. McGUIRE, *Clk.*,
R. J. McGUIRE, *D. C.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, T. R. McGuire, Clerk of the Chancery Court, in and for said County, do hereby certify that the foregoing instrument was filed

for record in my office, on the 2nd day of November, 1891, at 1 o'clock and 40 minutes, P. M., and the same has been this day truly recorded in Book XX, page 25.

Witness my hand and official seal, this the 2nd day of Nov. 1891.

T. R. McGUIRE, *Clerk.*
W. A. SHELBY, *D. C.*

222 STATE OF MISSISSIPPI, *Hinds County:*

I, W. Q. Cole, Auditor of Public Accounts for the State of Mississippi hereby certify that the within writing and the endorsements thereon is a true and correct transcript from the official records of said State in my keeping, taken from the original Deed on file in my office.

Witness my signature the 12th day of May, 1902.

(Signed) W. Q. COLE,
[SEAL.] *Auditor.*

223 EXHIBIT "B" TO W. Q. COLE'S DEPOSITION.

THE STATE OF MISSISSIPPI:

This indenture, Made and Entered into this the 26th day of October, A. D. 1891, between the State of Mississippi, of the first part, and J. T. Currie & M. A. Hull of the second part, witnesseth—

That whereas, there was sold on the 6th day of March, A. D. 1882 to the State of Mississippi, for Taxes due the State, the following tract of Land, to-wit:

Division of section.	Section.	Township.	Range.	Acres.
All fract'l.....	37	21	8 W.	185

Situated in Bolivar County, containing One hundred & eighty-five Acres, more or less.

And whereas, the said party of the second part desires to purchase said tract of land under the provisions of the laws of Mississippi, in such cases provided, and has this day applied to purchase the said land paid the sum of Thirty-eight Dollars, and Seventy-two Cents.

And in consideration of the premises, and the amount paid to the State of Mississippi, in accordance with the Statutes of the State, the State of Mississippi has this day bargained, sold and conveyed, and by these presents does bargain, sell and convey unto the said parties of the second part, their heirs and assigns forever, the aforesaid tract of land as above described, to have and to hold the same to said parties of the second part, their heirs and assigns forever. The State of Mississippi hereby warrants the title to said lands according to the Statute in such cases made and provided, and not otherwise.

In testimony whereof, these presents are signed, sealed and delivered, in the name of the State of Mississippi, by W. W. Stone,

Auditor of Public Accounts, who has hereunto subscribed his
224 name and affixed his seal of office, this the 26th day of October, A. D. 1891.

(Signed) W. W. STONE,
[SEAL.] *Auditor of Public Accounts.*

(Endorsements on Back.)

Date October 26, 1891.
County, Bolivar.
Purchaser, J. T. Currie M. A. Hull.

Treasurer's Fee	$ .50
Auditor's Fees	.55
Commissions	1.70
Sheriff's Costs Sale	1.00
Clerk's Fees	.10
State Tax Gen. Fund	6.23
State Tax School Fund	.74
County Tax	27.90
Total	$38.72
	27.90
	10.82

Registered:

J. J. EVANS,
State Treasurer.

Land lies in Ark.
Cancelled Nov. 23rd, 1892 & State Tax & int. refunded.
W. W. STONE, *Auditor.*

Filed for Record Nov. 2nd, 1891, at 1:40 o'clock P. M.
T. R. McGUIRE, *Clk.*
R. J. McGUIRE, *D. C.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, T. R. McGuire, Clerk of the Chancery Court in and for said County, do hereby certify that the foregoing instrument was filed for record in my office on the 2nd day of Nov. 1891, at 1 o'clock and 40 minutes P. M., and the same has been this day truly recorded in Book XX page 24.

Witness my hand and official seal, this 2nd day of Nov. 1891.

T. R. McGUIRE, *Clerk,*
W. A. SHELBY, *D. C.*

225 STATE OF MISSISSIPPI, *Hinds County:*

I, W. Q. Cole, Auditor of Public Accounts for the State of Mississippi hereby certify that the within writing, and the endorsements

thereon is a true and correct transcript from the official records of said State in my keeping, taken from the original deed on file in my office.

Witness my signature this the 12th day of May, 1902.

(Signed) W. Q. COLE,
[SEAL.] *Auditor.*

226 (EXHIBIT "C" TO W. Q. COLE'S DEPOSITION.)

The State of Mississippi, to J. F. Currie & M. A. Hull, Bolivar County, Dr.:

For Amount due him on account of the following described lands improperly sold by State on the 28th day of Sept. 1891 & Oct. 26th, 1891, as per voucher herewith filed, and deed this day cancelled for the following reason to-wit:

(Sold to State 6th day of March, 1882)

The land hereafter described was at date of erroneous assessment and sale to the State within the limits and the property of the State of Ark.

Approved:

J. M. STONE, *Governor,*
T. M. MILLER,
Att'y Gen'l.

Description.	S.	T.	R.	Acres.	Price.	Int.	Total.
No. 1 deed All.....	36	21	8 W.	824	43.58	3.80	58.20
" 2 " All fract'l.	37	21	8 W.	185	10.42		

Received Auditor's Warrant No. 4476 for $58.20 Dollars, in full of above claim.

Send Warrant to —— —— Mississippi.

J. T. CURRIE &
N. A. HULL,
By A. H. STONE.

Jackson, Miss. Nov. 23, 1892.
See Sec. 76, Acts 1900, page 89.

Sign above receipt (without detaching same from statement of account) and return to this office, when warrant will be issued and forwarded as you may direct.

(Signed) W. W. STONE,
Auditor Public Accounts.

—— — 189–.

227 (Endorsements on Back:) Bolivar County Currie & Hull. State $58.20.

STATE OF MISSISSIPPI, *Hinds County:*

I, W. Q. Cole, Auditor of Public Accounts for the State of Mississippi do hereby certify that the within writing, and the endorse-

ments thereon is a true and correct copy from the original voucher now on file in this office.

Witness my signature this the 12th day of May, 1902.

(Signed) W. Q. COLE, *Auditor.*

228 (EXHIBIT "D" TO W. Q. COLE'S DEPOSITION.)

Office of Attorney General, Jackson, Miss.

APRIL 20TH, 1894.

Hon. W. W. Stone, Auditor of Public Accounts,

DEAR SIR: At your request I have examined the question whether Island No. 76 in the Mississippi River, opposite Bolivar County, belongs to the State of Mississippi, or the State of Arkansas.

The exact point upon which the inquiry turns is upon the fact as to whether the middle of the main channel was West of the Island in 1817, the date of the Admission of Mississippi into the union. If the island lay on the East of that channel in 1817 then it belongs to Mississippi.

After exhausting all sources of information open to me in the Department of the Interior at Washington, I am unable to get the exact data necessary to a definite decision of the question. There are no maps or surveys of the River made at that or since time showing the location of the Island in 1817.

I enclose a copy of a letter written by Hon. John Wilson Comm'r of the General Land office to Hon. Jacob Thompson of date Feb'y 28th, 1855, showing that the ownership of the Island has been claimed by each State. It was included in general surveys from each State approved by the Department at Washington.

It appears, however, that the entire Island (Except about 51 acres) was sold and patented to individuals in 1847 by the U. S. Government through the U. S. Land Office at Little Rock, Arkansas.

I am further informed that the lands embraced in this Island are not upon the books of the U. S. Land office at Jackson and have never been sold or dealt with at this latter office.

Mr. Wilson expressed the opinion in his letter to Mr. Thompson that the Island belong- rightfully to Mississippi, but qualifies
229 this expression by saying that if the thread of the Main Channel could be shown to have been to the West of the Island in 1817 then the ownership would be in Mississippi.

He does not allude to the fact that the lands had been sold by the U. S. Government in 1847 through the U. S. Land Office at Little Rock.

This fact is not conclusive, but it is the only evidence that I can gather which tends to solve the doubt. It tends strongly to show that the U. S. Government regarded the Island at that time in the State of Arkansas.

Again the owners of these lands have been for many years paying taxes to the State of Arkansas and refusing to pay taxes to the State of Mississippi.

In 1882 these lands were sold at tax sale to the State of Mississippi, and in 1891 the State sold the same to Currie and Hull.

In 1892 the conveyances to Currie & Hull were cancelled and money refunded to them by the Auditor on the advice of Hon. T. M. Miller then Attorney General of the State and upon the approval of the Governor, upon the ground of an erroneous assessment, the island being *"within the limits and the property of the State of Arkansas."*

I perceive no reason for disturbing this ruling and decision of your office.

And as it has been sold to the State again for taxes and is now on the list in your office, I think it proper for you to adhere to the former ruling and strike it from the list of State lands in your office.

I enclose the following documents to be filed with this communication, viz.:

(1) Letter of Hon. John Wilson Land Com'r, Feb. 28th, 1855.

(2) Letter of Edward A. Bowers, Assistant Land Com'r, April 6th, 1894.

(3) Certificate showing entries of land at the U. S. Land Office at Little Rock.

Very Truly Your Ob't Serv't,

FRANK JOHNSTON,
Attorney General.

230 I certify that the foregoing 6 pages *is* a true and correct copy of the official opinion of the attorney general of the State of Mississippi in the matter therein referred to as shown by the records in this office, Opinion Book from July 22nd, 1893, to June 22nd, 1894, pp. 371, 376 inclusive. This May 12th, 1902.

(Signed) MONROE McCLURG,
Attorney General of the State of Mississippi.

See Code 1892 # # 182 & 183.
This office has no official seal.

I, W. Q. Cole, Auditor of Public Accounts of the State of Mississippi, do hereby certify that the above and foregoing 3 pages *is* a true and correct copy of the original now on file in this office.

Given under my hand and official seal this May 12th, 1902.

(Signed) W. Q. COLE,
Auditor Public Accounts.

Owner's name.	Assessment of lands in the county of Bolivar for the years indicated below, with amount of State tax due thereon, to-wit: Division of section.	Section.	Township.	Range.	East or west.	Number acres of uncleared land.	Value per acre of uncleared land.	Total value of uncleared land.	Total value of both cleared and uncleared land.	Number acres of State land.	Value per acre of State land.	Total value of State land.	Amount of State tax on land and improvements at mills on valuation.	Number acres sc-ool land (not taxable).
	For the year 1883:										$ cts.			
State	All	36	21	8						824	1.00	824.00	2.06	
"	All Fract'l	37	21	"						185	1.00	185.00	.47	
	For the year 1887:													
State	All	36	21	8						824	1.00	824.00	2.87	
"	All	37	21	8						185	1.00	185.00	.65	
	Class No. 1 for the year 1889:													
State of Miss	All	36	21	8	W					824	1.00	824.00	3.30	
" " "	All	37	21	8	W					185	1.00	185.00	.74	
	For the year 1892:													
Curry & Hull	All	36	21	8		824	.50	412.00					2.06	
" " "	All	37	21	8		185	.50	92.50					.41	
	For the year 1896, State tax at 6 m'ls:													
State	All	36	21	8	W					824		412.00	Outside Levee.	824 A.
	All	37	21	8	"					185		92.50	" "	185 A.
	For the year 1900, State tax at 6 m'ls:										No. of acres of levee land.			
N. A. Yerger	Lot 1 & N. ½ Lot 2	36	21	8	W	160		80.00	80.00		160		.48	
E. H. Woods	Lot 3 & S. ½ Lot 2	36	21	8	"	160		80.00	80.00		160		.48	
Elizabeth S. Woods	Lot 4 & N. ½ Lot 5	36	"	"	"	160		80.00	80.00		160		.48	
M. Y. Scott	" 6 & S. ½ " 5	36	"	"	"	160		80.00	80.00		160		.48	
E. M. Scott	" 7 & N. ½ " 8	36	"	"	"	160		80.00	80.00		160		.48	
W. H. Fitzgerald	S. ½ " 8	36	"	"	"	112		56.00	56.00		112		.34	
" " "	" 2	37	"	"	"	160		80.00	80.00		160		.48	
N. Y. Scott	" 1 & 2	37	"	"	"	160		80.00	80.00		160		.48	

232 STATE OF MISSISSIPPI, *Hinds County:*

I, W. Q. Cole, Auditor of Public Accounts of the State of Mississippi, and having in my official keeping as such the Land Assessment rolls of Bolivar County, State of Mississippi, do hereby certify that the above and foregoing contains a true and correct transcript of the records of Land Assessments in Bolivar County, for each of the years 1883, 1887, 1889, 1892, 1896 and 1900, so far as the same pertains to Sections 36 and 37, Township 21, Range 8 West.

Given under my hand and official seal, this 12th day of May, A. D., 1902.

____ ____,

[SEAL.] *Auditor of Public Accounts.*

233 (EXHIBIT "F" to W. Q. COLE'S DEPOSITION.)

No. 4476. For $58.20.

J. F. Currie & M. A. Hull.

Erroneous Land Sales Fund.

Sec. 3831, Code 1892.

Nov. 23, 1892.

Disposition of Warrant.

A. H. Stone.

Bolivar.

I, W. Q. Cole, Auditor of Public Accounts of the State of Mississippi, do hereby certify that this instrument is a true and correct copy of the jacket or wrapper to voucher No. 4476 on file in my office.

Given under my hand and official seal this the 13th day of May, 1902.

[SEAL.] W. Q. COLE, *Auditor.*

J. P. 311.

234 T. M. HENRY on oath being first duly sworn deposes as follows:

Direct examination by D. E. MYERS:

Int. 1. State your name, age, residence and occupation.

A. T. M. Henry; 45 years; Jackson, Mississippi; Deputy Auditor of Public Accounts of the State of Mississippi.

Int. 2. What official position did you hold in the year 1892, particularly in November 1892?

A. I was the Revenue and Warrant Clerk. W. W. Stone being the Auditor of Public Accounts.

Int. 3. Who was the Deputy Auditor of Public Accounts in 1892, November 23rd, 1892?

A. Col. W. D. Holder.

Int. 4. Were you in the same office with him?

A. I was.

Int. 5. Were you acquainted with his handwriting?

A. Yes sir.

Int. 6. Have you seen him write?

A. Frequently, every day nearly.

Int. 7. Please examine the Register of State Deeds for the Levee Districts on page 17, under date November 23rd, 1892, and opposite the entry of all of Section 36 and fractional Section 37, Township 21, Range 8 West, and state in whose handwriting the following words are in red ink, "Land is in Arkansas" "Land is in Arkansas?" And also the following entries in red ink, to-wit, "Cancelled November 23rd, 1892, the State tax and Int. refunded," and also the following in red ink "Cancelled, November 23rd, 1892, and State tax and Int. refunded," and state in whose handwriting these entries in red ink are on the book?

A. To the best of my knowledge and belief in the handwriting of Col. W. D. Holder.

Int. 8. What official position did Col. W. D. Holder occupy at that time?

A. Deputy Auditor of Public Accounts.

Int. 9. Who was the Auditor at that time?

235 A. W. W. Stone.

Int. 10. State whether or not Col. W. D. Holder is dead or alive. If dead about what time did he die?

A. Col. Holder is dead. He died in 1900.

Cross-examination by A. Y. SCOTT:

X Int. 1. When do these entries in red ink appear to be made?

A. They appear to have been made November 23rd, 1892.

X Int. 2. How long was Col. Holder Deputy Auditor, from what date and to what date?

A. I could not be exact as to the months. From 1886 to January 1896. During the entire term of Capt. Stone's administration—about ten years.

Further deponent saith not.

T. M. HENRY.

Indorsed: Filed May 28, 1902. W. P. Feild, Clerk.

236 R. J. MATHEWS, a witness on behalf of the complainants, being called, and after being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded his as follows, to-wit:

Direct examination by D. E. MYERS:

Int. 1. State your name, age, occupation and place of residence.

A. A. J. Mathews, age 68, coal dealer and livery business, Rosedale, Mississippi.

Int. 2. Are you acquainted with Island 76 in controversy in this suit?

A. Yes, I went on it a few times.

Int. 3. State whether or not you ever looked after that property as the representative or agent of any one? If so, for whom?

A. Well I looked after it; I went on it once; I was going up another time, I did not get on it; I went to Benoit, and out to the landing there at Bolivar, but I found out what I wanted and did not go on. I went there at the instruction of Judge James Murphy. He wrote me that the island belonged to Mrs. Sallie Murphy. He wanted me to go down there and see about parties cutting posts off of it—mulberry posts.

Int. 4. Who was Mrs. Sallie Murphy?

WITNESS: Who was she?

Mr. MYERS: Yes.

A. She was the wife of Judge James Murphy.

Int. 5. About what time was that,—the years?

A. Well I can't be positive about the years, but it was before Judge Murphy's death, a year or so, but I do not know exactly; it was somewhere in the nineties. I think it was just before I moved over here, it was '90 or '91. He wrote me about noticing the place for him, and I stopped there on the way to Arkansas City in a boat or skiff. The next time he wrote me about the posts and I went from here down to Benoit and I walked out to Bolivar; did not go on down; I found out all I wanted without going there; they had been cutting posts on it.

Int. 6. Was there anybody living on the Island?

237 A. Not that I know of unless it was some fishermen.

Int. 7. Where were you living at that time, and how long did you reside there?

A. The first trip I made I lived in Arkansas in Desha County, right opposite here; that was the first trip I made; the second time I was living here.

Int. 8. What year did you move to Rosedale?

A. I think it was in 1892, if I am not mistaken. The year I moved here is the year I got the last letter about it; the time he asked me to go and see about the posts. I got on the train and went down to Benoit.

Int. 9. When did you first know the Island and where the main channel of the Mississippi was?

A. The first I remember anything about it was in 1857. The reason I know that year is because I went down the river in a produce boat we were coasting down.

Int. 10. What side of the island was the main channel of the river at that time?

A. On the Mississippi side; the left going down; we went to the left.

Int. 11. Well did you have any further experience or observation of that channel and island after 1857, up to 1861 or '62? If so state what it was?

A. Not until about after '60. After '60 and up until say probably 1861 I was up and down the river when the Federals took Island 10.

I was running on a small mail packet from Memphis to Vicksburg, and was up and down the river until it was closed by the Federals.

Int. 12. Where was the main channel of the river then?

A. We most always went to the left of the Island; sometimes the other way.

Int. 13. How was it when the river was low?

A. My recollection is that when the water was low we went around the point.

Int. 14. Where did the point run?

238 A. Next to the Mississippi shore.

Cross-examination by A. Y. SCOTT:

Cross-examination waived.

R. J. MATHEWS.

When I was running on the Str. Victoria in 1860 she was a mail boat and we usually went to left of — on account of mud lands behind island—later when on through boat went mostly to the right of island. This is what I thought I said and intended to say in above.

R. J. MATHEWS.

Indorsed: Opened & published January 31st, 1903. W. P. Feild, Clerk.

239 C. W. ORTON, witness for the Complainants.

(By COMPLAINANT:)

Int. 1, in chief. State your name, age, residence and occupation.

Ans. # 1. My name is Clark W. Orton, age 28 years, residence, Ortons Ranch, Freemont Co., Idaho. Occupation, Rancher and Civil Engineer.

Int. 2, in chief. Are you acquainted with the parties to this suit, if not all of them, which ones do you know?

Ans. # 2. I am personally acquainted with Mr. C. Moore.

Int. 3, in chief. Where did you reside during the winter of 1898 and 1899, and particularly from about January 1st, 1899 to September or October, 1899, and what was your business?

Int. 4, in chief. If in answer to interrogatory 3, *supra*, you state that during the winter of 1898 and 1899, and particularly from January 1st, 1899 until September or October 1899, you resided on Island 76 in the Mississippi River; state whether or not during that time you were employed by Moore & McFerren, or Claude H. Moore, their agent and manager, to look after and take care of said island, and their property thereon, while they were logging on Arkansas River, or elsewhere, and give the dates as near as you can, to-wit:—when you began to look after the island, and the date when you ceased to do so.

Ans. # 3 & # 4. I resided on Island 76. I was studying forestry & means of handling & uses & values of timber. From the last of May 1899 to about the first of Sept. 1899 I was in the employ of

Moore and McFerren of Memphis, Tenn. I was hired to look after their timber on Island 76 by their agent Claude Moore.

Int. 5, in chief. State whether or not O. L. Sanders was on the island from the fall of 1898, until about January or February 1899, cutting, hauling and shipping logs therefrom for Moore & McFerren, and if you know when Mr. Sanders left the island and went to the Arkansas River in January or February, 1899. Please give the date.

240 Ans. #5. To the best of my recollection I severed my connection with the Outzen Levee Construction Co., the last of Dec. The date they left Eutaw, Miss. I reached Island 76 between Jan. 5 to 10th. Mr. Sanders had then left the island for his contract on Arkansas River and had gone when I reached there, but if I remembered correctly, the cook, a man by the name of Perry, was there with a part of their plunder.

Int. 6, in chief. Please state whether or not Moore & McFerren paid you for your services in taking care of the island and property thereon, for them, during the absence of Mr. Sanders therefrom if yea, state how much.

Int. 7, in chief. Please examine the check here handed you dated 12/19-1899 for $25.00 payable to your order, and state whether or not you indorsed same and collected the money thereon, and state whether or not that was in payment for your services in taking charge of the island for Moore & McFerren from about January 1899, until September or October 1889, and please attach hereto said check and mark it Exhibit "A" to your deposition, same also being Exhibit "D" to the deposition of Claude H. Moore in this cause.

Ans. # 6 and # 7. Moore & McFerren paid me for my services in taking care of island 76 & property thereon.

The inclosed check marked Exhibit A for the sum of $25.00 was received & indorsed by me. I also rec'd that amount in cash upon indorsing & cashing check which was in payment of my services to Moore & McFerren.

Int. 8, in chief. State anything else you may know going to show the possession of Moore & McFerren of the Island 76 from about September 1898 to September 1899.

Int. 9, in chief. Please examine also the following letters here handed you purporting to have been written by you on dates Bolivar, Miss. dated Nov. 27th, 1899, addressed to Mr. C. Moore, (Exhibit B to C. H. Moore's deposition herein & the other dated

241 Bolivar, Miss., dated Dec. 16, 1899—addressed to Mr. Moore, Memphis, Tenn. both letters signed by you, whether or not those letters were written & signed by you—and what was the occasion for writing them, & whether the check Ex. "A." was sent you in pursuance thereto. Please make said two letters exhibits B & B2 respectively, or copies of them.

Ans. # 8. The letters marked Exhibit B & Exhibit B2, are true copies of letters written to Moore & McFerren by C. W. Orton.

Witness stated in answer to Cross-interrogatories propounded by attorneys for Defendants.

X Int. 1. If in answer to Interrogatory No. 3, in chief, you should state you were in the employ of the United States Government, state in what capacity you were employed.

Ans. # 1. I have not, or had not been, in the employ of U. S. G'v't for some time past.

X Int. 2. State when said employment was begun and when ended, giving dates.

X Int. 3. State whether or no- said appointment was in writing and if so by whom was it signed.

X Int. 4. What salary did you draw.

X Int. 5. If in answer to X Int. 3, you should state that said appointment was in writing then file same with your deposition as exhibit thereto.

Ans #2, 3, 4, & 5. Answered by above questions and answers.

X Int. 6. State when you were employed by Moore & McFerren, and in what capacity you were to act. Give the date when said employment begun and the exact date when said employment ended.

X Int. 7. State by whom you were employed and state where you were at the time you were so employed, and who was present at the time.

Ans. # 6 & 7. I cannot remember the exact dates at this time, but I think it was the last of May 1899. The Steamer Kate
242 Adams landed at Island 76. Mr. Claude Moore ran down and hurriedly asked me a few questions and told me to watch the timber, or his interests until Saunders came and he would pay me for it. The boat only landed a moment and we had only a limited conversation. I thought little of it until Mr. Jones arrived when I immediately took steps to protect Moore & McFerren's interests, by informing their agent at Arkansas City, and posting the island against trespassers.

C. W. ORTON being examined on Additional interrogatories and cross-interrogatories testifies as follows:—

By COMPLAINANT:

Int. 1st. Mr. C. L. Jones, in his deposition in this case, in connection with his taking possession of Island 76 in 1899, and his attempt to keep all trespassers off the same, says:

"Yes sir. The Kate Adams landed one night with a logging out-
"fit and some men; myself and the crew that was there—Orton,
"Dad Wilson. Palmer Wilson and a little negro I had with me,
"went down to the boat armed. Going down there, the crowd told
"me they were with me. and if I did not want them to get off. why
"we would keep them back. They each took their stand; old man
"Wilson, Palmer Wilson. Orton and the negro boy took their stand
"in the edge of the thicket with their guns, and told me to stop
"the first man, and they would get the balance, and to start the
"ball rolling, and that they would see that nobody else got off, and
"in that way I kept them from unloading their plunder and their
"wagons."

As stated by Mr. C. L. Jones. it was Mr. Saunders and his logging

outfit you were trying to keep from landing on the Island—please state whether or not the above statements by Mr. Jones are true.

Int. 2nd. Mr. C. L. Jones, in answer to his interrogatory 25th, of his deposition, stated:—

243 "Mr. Orton did on several occasions, come to my tent and "wake me up during the night—when he thought a boat "would land, he would go with me to the river—get his shot-" gun and come out with me. On one occasion the Hill City pulled " in and tied up on account of darkness; he got his shotgun and " went down with me that night, and told me to go down to the edge " of the boat to see who was going to get off, and said he thought " they would up around in above us and get off before we could see " them."

Please state whether or not the foregoing statement is true.

Int. 3rd. Mr. C. L. Jones further testified that when he first went on the island, somewhere between the 10th and 15th of August, 1899, that you were there and assisted him to post notices to warn off all trespassers, and that you never told him you were in charge of the Island for Moore and McFerrin until a week or two after he had taken possession of the Island, and after you had gone down to work for Mr. Saunders after he had arrived on the Island and commenced cutting saw logs for Moore and McFerrin; now please state whether that is true or not, and whether or not, when he first came to the Island, you informed him you were there in charge by Moore and McFerrin?

Int. 4th. Anderson Hence, a colored man, in his deposition in this cause, has testified in regard to his relations with your business and otherwise, in answer to Int. 9th, as follows:

" Mr. Orton—him and I was working together. I helped him " carry some timber down to Arkansas City, and we was a little short " of money and he was talking about it—kind of a business matter—" and he said he did not have any money, and that Mr. Saunders " owed him some and would not pay him because he would not say " he was in charge of the Island—something of that kind."

Now please state whether or not you ever told Anderson Hence any such thing as stated by him in the above answer.

Int. 10th, propounded to Anderson Hence and his answer thereto are as follows:

244 " Int. 10th. I gather from what you state, that the trouble " was that Mr. Orton was unwilling to testify in this law " suit that had been brought about the Island—that he had posses-" sion of the island for them, is this correct?

" Ans. Yes. That was what he said, and he said he would not " do that because it was not so."

Now Mr. Orton, please state whether or not you made this last statement to Anderson Hence, or if you ever stated to him that you were not in possession of the island for Moore and McFerrin, or that you would not testify to that fact because such was not the case?

Int. 6th. State anything else you know relative to the fact of your connection with the island and holding it for Moore and McFerrin during the absence of Mr. Saunders up the Arkansas River,

and which you have not heretofore stated in answer to the original interrogatories herein.

Ans. In answer and reply to Mr. C. L. Jones' testimony I wish to make and swear to the following: I was at the landing of the Steamer Kate Adams at the time Mr. Saunders' outfit tried to land. I was unarmed, as was Dad Wilson, and I believe Palmer Wilson. I did not tell Jones that "I was with him," or did Dad Wilson, and I did not hear Palmer Wilson do so. In no way by word or action did I aid or encourage the action of Mr. Jones, and I did not make any of the statements attributed to me by him. I did not wake him up in the night stating the boat would land above, etc., or to the incident of the Hill City it cannot in any way be attributed to, or connected with the possession of Island 76. It was in the evening, and the Pilot of the Hill City was trying to head up the wrong channel, and would get stuck, back off, run on and get stuck again. We were out on the river bank and started "guyey" him, (the pilot). He got mad and answered us which made us all the worse. He backed off and headed for our camp and made his landing. We thought they were going to make trouble and all of us went for our
245 guns. It can in no way be attributed to the possession of Island 76. I was there when Mr. Johns landed, which was wholly unlooked for by me. I had received no instructions as to how to act in a case of that kind. I was told that Mr. Johns was a "bad man," and had killed three or four men, etc. Mr. Johns asked for somebody to help him post the island, I did not offer him any help, nor did I help him. I asked him what a legal post in that state consisted of and he replied 12 posters. I got a copy of one of his posters and copied it. I then, unknown to him wrote twelve posters and signed Moore and McFerrens name and put them up that day. Mr. Johns had 14 posters. He never posted them on the island to my knowledge. The posters laid around camp for a long time. I built a fire with 6 of them one morning as they were mixed with some waste paper. I wished no trouble with Mr. Johns as he was quick tempered and at that time I did not know the position or stand Moore & McFerren would take. I did not tell Mr. Johns that I represented Moore & McFerren until three or four days had passed then I told him, but long before Mr. Saunders reached the island.

As to statement of Anderson Hence, he was working for me. I had him hired with two or three other darkies, to float some timber to Arkansas City, when we reached there I paid them off. I might have told Hence that I was "hard up" and "short of money" as he wished to borrow money from me He owes me borrowed money today. I say I *might* have done that. I do not remember doing so. I never made any statements as he attributes to me in Int. 4th, and Int. 10th.

Indorsed: Filed Oct. 25, 1902. W. P. Feild, Clerk.

246 EXHIBIT "D" TO C. H. MOORE'S DEPOSITION.

EXHIBIT "A" TO C. W. ORTON'S DEPOSITION.

No. 12038.

Moore and McFerrin, Saw Mill and Box Factory.

MEMPHIS, TENN. 12/19 1899.

Pay to the order of C. W. Orton $25.00 Twenty-five Dollars.
To the First National Bank Memphis, Tenn.

MOORE & McFERRIN,
Per C. H. MOORE.

Endorsed: C. W. Orton. Pay to the order of Valley Bank. E. W White. Pay to the order of any Bank or Banker All endorsements guaranteed. Valley Bank, W. B. Robets, Cashier. The National Bank of Commerce. Paid per F. S. Omberg.

247 EXHIBIT "B" TO C. H. MOORE'S DEPOSITION.

EXHIBIT "B" TO C. W. ORTON'S DEPOSITION.

BOLIVAR, MISS., *Nov. 27th*, 1899.

Mr. C. Moore, Memphis, Tenn.

DEAR SIR: Last May when "Steamer Kate Adams" stopped at Island 76, you were on the boat and asked me a number of questions in regard to the Island. Just before she left you told me to watch the timber on the Island and that you would pay me for it, and that if it was bothered, to report this fact to Bondelli Mill, Ark. City.

When Mr. Sanders came to the Island, or I believe that it was Sept. 3rd or 4th, he told me that he had heard from you and that you had instructed him to pay me off, and asked me how much it was. I told him that it would be $10.00 per month, which he said was all right, and he did not have the money with him then, but that he was going to Memphis, and when he came back he would bring it.

Mr. Sanders has been to Memphis a number of times, but has never paid me the money. I have spoke to him about the matter. The last time he said that you would settle the matter with me.

It has been over two months since the money due (Sept. 4th) and I used it. I wish that you would send me a check for the amount, or if you prefer to Mr. Sanders, with instruction to give to me upon receipt of same, not to wait until pay day.

I am with Mr. Sanders on Island 76. I expect to be here for two weeks, then I will be in the Ark. River, as yet I do not know where but will keep my whereabouts known to you, and if I can be of any service to you in your case, I will cheerfully give you any information in my power. If at any time you should wish to use me and do

not know where I was, a letter addressed to Ortonville, Minn., will reach me, or the P. M. of that town will give you my address.

Very respectfully, C. W. ORTON.

248 EXHIBIT "B²" TO C. H. MOORE'S DEPOSITION.

EXHIBIT "B²" TO C. W. ORTON'S DEPOSITION.

BOLIVAR, MISS., *Dec. 16th*, 1899.

Mr. Moore, Memphis, Tenn.

DEAR SIR: I wrote you on Nov. 27th in regard to my pay for watching timber on Island 76. You have not answered my letter. I wish that you would send me the money by return mail at Bolivar, Miss. You have not treated me right in this matter, and unless you do so at once, I shall feel justified in starting proceedings at Arkansas City, against you on the timber. Please reply at once, the amount is thirty dollars.

Respectfully, C. W. ORTON.

249 X. J. PINDALL being duly sworn deposes and says:

Int. 1. Please state your name, age, residence, occupation and profession?

A. Name, X. J. Pindall, age 60; residence Dumas, Desha County, Ark., occupation lawyer.

Int. 2. The controversy in this case is as to the title and ownership of what is known as Island 76 in the Mississippi River, it being the same property described in the general warranty deed made by Mrs. Sallie A. Murphy to Moore & McFerren, bearing date of Aug. 28th, 1898, and of record in the Register's Office of Desha County, Arkansas, at Arkansas City, in Record Book No. 11, pages 293 and 294; now please state whether or not you are acquainted with said Island 76, and the conditions of the River at that point, and how long you have known said Island.

A. I have known something of Island 76 referred to in int. since 1862.

Int. 3. Please state whether or not you are acquainted with the channel of the river, that is to say on which side of the island,—the Arkansas side or the Mississippi side—the main channel, or thread, of the river was when you first knew it, giving the date when you first knew it and your opportunities for knowing.

A. From 1862 until 1875 and after the main channel of the Mississippi River was on the East or the Mississippi side of Island 76. In 1862 General M. M. Parsons crossed his command over the Miss. River at a point just below Island 76. I was serving on General Parsons' staff at the time, we camped while on the east side at Lake Bolivar, and after crossing the river we camped about the mouth of Cypress Creek. During the time we were fixing to cross the Mississippi river and crossing the same, it was necessary to keep a watch out for the enemies' forts up and down the river, and at the stage of

the river at that time the boats would follow the channel and it be-
come part of my duty to ascertain where that channel was be-
250 tween Bolivar and above that we might watch the approach of
boats and the direction and distance they would be from us,
and I found the channel at that time as stated, on the east side of the island.

Int. 4. State whether or not you ever resided at Napoleon, Arkansas; if so, during what years, and how far Island 76 was and is below Napoleon, and your means and opportunities for knowing where the channel of the Mississippi River was at that time, and subsequently.

A. I lived at Napoleon, Ark., from the 1st of Jan. 1866, to 1875. Island 76 was some 10 or 12 miles from there by land. During that time I was interested as attorney in litigation in matters affecting property on the island, and also during that time my firm purchased an interest in some lands upon the island. I think it was at a tax sale we purchased them, and I passed up and down the river by said island on the steam boats frequently, and at said time I was also frequently at Neblet's Landing on the Miss. side opposite, or about the upper end of the island.

Int. 5. If you should state that at the time you first knew Island 76, the channel of the river was east of the island, or on the Mississippi side, and that there has been a change in that channel since that time, please state whether or not that change occurred rather suddenly about the time of the cut-off which carried away the side of old Napoleon, just above it, giving the year as near as you can.

A. As to what caused the change of the channel would be only an opinion. I should think though that the cut-off at Napoleon caused it ultimately, and think the channel was changed from one side of the island to the other without affecting the island materially.

Int. 6. How long have you resided in Desha County, Arkansas, near said Island 76, and did you or not have occasion to frequently pass by it during the period of years you are testifying about?

A. I have resided in Desha County since 1866. As a mat-
251 ter of common history the channel was changed from the east
to the west side of the island sometime in the early 80's.

Int. 7. Please state anything else that you may know that shows, or tends to show, that originally, or within the date of your knowledge, the main channel was on the Mississippi side of Island 76, and that the chute on the Arkansas side of said Island was only navigable in high water. Also, in this connection, state anything you know in regard to the State of Arkansas having obtained jurisdiction over this Island ever since you knew it.

—. ——.

X. J. PINDALL.

Indorsed: Opened & published by rule of Court, June 5th, 1903. W. P. Feild, Clerk.

252 GEORGE MALONE, a witness on behalf of the Complainant-being first duly sworn deposes and says:—

Direct examination by D. E. MYERS:

Q. 1. State your name, age, residence and occupation?
A. George Malone, No. 8 Jefferson Street, Memphis, Tenn., 69 years old, river business, pilot and captain.
Q. 2. How long have you been engaged as Captain and Pilot on Mississippi River, as low down upon the river as Island No. 76?
A. Since the first part of the '50's, about '52.
Q. 3. Do you know where island 76 is?
A. Yes, sir.
Q. 4. How long have you known Island 76?
A. I remember island #76 first when I was a boy about 1842.
Q. 5. In what capacity did you go down the river in 1840?
A. As passenger.
Q. 6. As passenger?
A. Yes, sir.
Q. 7. What year did you begin to pilot or be a captain and what kind and name of the boat?
A. My first experience was as pilot on a flat boat 'long about '48 or '50.
Q. 8. Was about '48 and '50 your first experience there?
A. Yes, sir.
Q. 9. Where was the main channel or thread of the stream then?
A. Going down stream it was on the left.
Q. 10. And coming up stream?
A. Coming up stream on the right.
Q. 11. How many years were you flat-boating past that point?
A. About two years.
Q. 12. When did you first know the island, when did you as captain of a steam boat?
A. About '53.
Q. 13. What boat were you on?
253 A. The Falcon.
Q. 14. In what capacity?
A. As captain.
Q. 15. How long did you run as pilot on the Falcon; where did she run to and from?
A. From Memphis to New Orleans. I was running on her as barkeeper while she was in the mail trade.
Q. 16. I am speaking of the time *to* run as pilot or captain?
A. I was taken on as pilot down to New Orleans and come back as passenger on the same boat.
Q. 17. While on that trip to New Orleans in 1852 or '3 on the Falcon was the channel of the Mississippi River on the East or West side.
A. On the East side.
Q. 18. Well now state what other boat you run as pilot after 1853 and give the dates?

A. I was on the George W. Cheek running from Memphis to Arkansas City, Ark.

Q. 19. Where was the channel during the time you run on the Geo. W. Cheek?

A. It was to the left side or the Mississippi side.

Q. 20. How often did you pass that island while on the Geo. W. Cheek?

A. We made two trips a week, and passed there four times each week.

Q. 21. What next boat did you run on?

A. Well the next one was the A. J. White from Memphis to Arkansas City.

Q. 22. How long did you run on the A. J. White?

A. About a couple or three years.

Q. 23. About what years.

A. I should say 1873, '4 and '5.

Q. 24. During those years where was the main channel or stream of the Mississippi River as to island 76?

A. Down to the left of the island on the Mississippi side.

Q. 25. And in what capacity did you run the A. J. White?

A. I was in command on her.

Q. 26. Well, what was the next boat, if any, and in what
254 capacity and from what points?

A. After that I was on the Witchita Belle in the same trade in and about 1878 or '79. I was in command of her.

Q. 27. Passed island No. 76 how often a week?

A. I did not pass but four times a week, twice going and twice coming back each week.

Q. 28. On which side was the channel as to island 76 at this time?

A. Down to the left on the Mississippi side.

Q. 29. Did you run any other boat after the Wichita Belle in that time.

A. Yes, sir, I run the Illinois the same year.

Q. 30. Same year, what do you mean?

A. 1878.

Q. 31. Well, was the channel at the same place still in 1878 while you were on the Illinois?

A. Yes sir.

Q. 32. Well, when did you have any further experience or knowledge of island 76?

A. Well I have been up and down the river frequently since that.

Q. 33. Has there been any change of the channel at Island 76?

A. Yes sir.

Q. 34. If so, what?

A. The channel goes down to the right of the island.

Q. 35. When did the channel go through in to the Arkansas side?

A. Well, as near as I can recollect about 1882.

Q. 36. From the time you have known the island was there not a chute on the right?

A. Yes sir, there has been a chute there ever since I have been on the river.

Q. 37. Could that be run in high water with a boat?
A. Yes sir.
Q. 38. In time of low water did you run on the Arkansas side or the Mississippi side?
A. Well when there was low water we had to go down the bend.
255 Q. 39. By around the bend you mean on the Mississippi side?
A. Yes sir.
Q. 40. The main channel of the river was then up to that time, that is up to the '80's on the left side of Island No. 76?
A. Yes sir.

Cross-examination by Mr. SCOTT:

X Q. 1. Do you know the usual width of the Mississippi River?
A. Down there?
X Q. 2. Well, all along?
A. It's a mile wide here, I could not say exactly it varies.
X Q. 3. Do you know of any place where the river channel is under 1,000 feet.
A. No sir, I don't believe I do. I don't know of any down South of here; sometimes in low water a sand-bar may stick out and it gets mighty narrow. Down here below Cow Island I have known it to get very narrow in there.

Further deponent saith not.

GEORGE MALONE.
By E. J. HEIDEL,
Stenographer.

Indorsed: Filed Jul- 9, 1903. W. P. Feild, Clerk.

256 CHARLES LE VASSEUR, a witness on behalf of the complainants, being duly sworn, testified as follows:

Interrogatories Propounded by Counsel for the Complainants.

Int. 1. State your name, age, residence and occupation.
A. Charles Le Vasseur, 52 years old, civil engineer, Memphis, Tennessee.
Int. 2. How long have you been a civil engineer, and where and what amount of experience have you had in that line? State in full.
A. I graduated from the Ecole Polytecnique School of France in 1878. I was in the army as field engineer, as first lieutenant until 1883, and from 1883 to 1889 I was chief engineer of the Panama Canal. From 1890 to the present time, United States Assistant Engineer. Mississippi River Commission.
Int. 3. Have you been in the employment of the United States government; if so, how long and in what capacity?
A. I was United States assistant engineer from 1890 to date.
Int. 4. Assistant what?

A. Assistant engineer from 1890 to date.

Int. 5. What position do you hold now?

A. The same as previously stated.

Int. 6. State whether or not you are familiar with the Mississippi River and its banks and channel, and if so, what portion of the river and your means of such knowledge.

A. I am acquainted with the Mississippi River and its banks from Cairo to New Orleans, having surveyed the Mississippi River in the 1st, 2nd, 3rd and 4th Districts.

Int. 7. Do you know where Island 76 in the Mississippi River is located, and are you acquainted with the river at that locality?

A. I am.

Int. 8. What experience have you had, if any, with surveys of river banks by cross sectioning, sounding, etc. Please state fully.

A. I have been in charge of the survey of the Mississippi
257 River since I have been in the service of the government.

Int. 9. Please examine the map here handed you bearing certificate of Binger Hermann, Commissioner of the Land Office *Ex-Officio* Surveyor General, being map of Fractional Townships 11 and 12 South of the base line, Range 1 east of the 5th principal meridian. The said survey and plat stating on its face to have been made in February, 1827, by Daniel Miller, Surveyor General, and having on it the following certificate attached thereto, "Surveyor's Office, St. Louis, 22 January, 1829. The above plat of fractional Township- 11 and 12 south, Range 1 east of the 5th principal meridian is conformable to the field notes of the survey thereof on file in this office. (Signed) W. McRee, Surveyor of Public Lands, Illinois, Mississippi and Arkansas." Please examine said map and state by whom survey was made and when.

A. It was made by Mr. McRee, Surveyor of Public Lands in Illinois, Mississippi and Arkansas. The map is dated 22nd January, 1829.

Int. 10. Please file said map as Exhibit A to this your deposition as part thereof.

A. I do.

Int. 11. Please state what that map shows.

A. This map shows part of Arkansas, and some lines supposed the boundaries of Island 76.

Int. 12. What does that plat on its face, or where does that map on its face show Island 76 to be; I mean in what state, Mississippi or Arkansas?

A. It does not show anything in regard to what state.

Int. 13. What does it show?

A. It shows the surveyor only touches the island at three different points.

Int. 14. Where are those points as indicated?

A. Those points are, one at the head of the island, which I will mark A, two at the lower foot of the island which I will mark B and C.

Int. 15. Looking at said map again on the west, we notice a
258 certain portion of land sectionized. Is that shown to be in Arkansas or Mississippi?

A. That is Arkansas.

Int. 16. On the east we find a broad space between what is marked as Island 76 and the main land, with certain marks and lines drawn thereon. Now please explain what those lines mean from a surveyor's or engineer's stand point, of the Mississippi River.

A. The lines represented by dots or dotted lines, running from the Arkansas main shore to some point on the Mississippi side, or of the island side, indicate that the surveyor took a certain point on the bank opposite and ran it to that point by making a crude triangulation from the main bank to said points. I say crude, because his triangulation system is not contiguous or close, and cannot be but approximately correct.

Int. 17. In looking at that map would you say that the space enclosed, marked Island, was intended, or not, for Island 76 by looking to the Township or Ranges?

A. By the position I should think that it was intended for Island 76, but as I stated it is only an approximate locality of the island.

Int. 18. On the west side of the island where the figures noting the triangulations are shown, it seems to be much wider than that on the eastern side of the island. Please explain what that indicates, if anything, or what significance if anything as to the location of the channel at that point at the date of that map.

A. The line indicated as the Mississippi shore line on this map is only a rough approximation of the Mississippi bank line at that time. As far as the channel there is no indication on this map which will tend to show on which side of the island the channel was running at that time. The large portion of territory included west of the island between the bank of the island and the main shore of Arkansas may have been at the time of the survey, as it is the case in similar locations along the river, a wide flat or sand bar, which was covered only at medium stage, and the channel of the river may have been east of the island, between the eastern banks of the island and
259 the west bank of the State of Mississippi. If the sand bar west of the island was in existence the larger portion of the water of the stream must have been land.

Int. 19. Then if I understand you the width of the area between the island and the main shore of Arkansas does not show simply because it is wider than the space between the island and the State of Mississippi shore, then the channel was through that wider space? How is that?

A. No sir, the width of the channel or bed of the river does not indicate that the deepest water is found in these large sections.

Int. 20. Do you remember of any instance of such an island, say Island 63?

A. Island 63 is one.

Int. 21. Where there is a broad space of shallow water where the channel of the river is, if so, please explain it.

A. 63, as you stated is one case of it.

Int. 22. How is it at Island 63?

A. West of Island 63 between Arkansas and the west bank of the island for about 3,000 feet there is a very wide space which is covered by only a medium stage of water.

Int. 23. A medium stage of water?

A. Yes sir, which at the time was very flat. On the east side of Island 63 the bed of the river is very narrow, but deep, and for several years the channel or deepest water of the Mississippi used to be between the east bank of 63 and the west bank of the State of Mississippi from McLeod's Landing to Burke's.

Int. 24. Do you from an examination of that map see anything else that indicates that at the date thereof, the channel of the Mississippi River was east of Island 76? If so, state it.

A. This map does not show anything at all about where the channel of the Mississippi River used to be at the time of the survey.

Int. 24½. Does the eastern line, I mean the shore line, along the State of Mississippi indicate any particular thing as to where
260 the channel was, or how it was at that time?

A. No sir, because the line of the State of Mississippi, the east shore line was not accurately surveyed by Mr. McRee as shown on the map.

Int. 25. Please examine the field notes attached to that map, Exhibit A, and state whether or not, from them you can tell that under that survey Island 76 was intended by the engineer to be placed in the State of Arkansas.

A. There is nothing indicating that in the notes of this map.

Int. 26. Is Island 76 sectionized on that map?

A. Not only is the island not sectionized, but it is not even surveyed.

Int. 27. Can you state from that map alone where the channel of the Mississippi River was at the time of its date?

A. No sir.

Int. 28. State whether or not the distance across the Mississippi River as shown by that map, both above and below the island is shown, or can you tell the distance; if so, how?

A. You mean to say, can I tell the distance where those triangulation points are?

Int. 29. I mean between the island and the shore of Arkansas or the shore of Mississippi?

A. No sir, the distance between the island east bank and the west bank of Mississippi, there is nothing from which I can tell the distance.

Int. 30. Can you tell the distance between the shore line of Arkansas and the island on that map?

A. Yes, at three points.

Int. 31. Indicate those points.

A. A, B and C marked on the map, if I take for granted that the triangulations shown on the map are correct.

Int. 32. What are those distances?

A. If I had a scale I could scale it. That is the only way you can do it.

Int. 33. You have no scale with you?

261 A. Not with me, no sir.

Int. 34. Then you state that the distance across the chute

between the island and the Arkansas bank is shown as drawn to a scale; is that correct?

A. At three points.

Int. 35. You mean A, B and C, between those points you cannot tell anything about the distance.

Int. 36. I believe you have stated that the distance between the main Arkansas shore and Island 76 is shown by triangulations. State whether or not any measurement was made from the main shore of Arkansas to the island.

A. Yes sir, it was made from the main shore of Arkansas to the island. The surveyor did not go on the island to make a survey of the bank of the island, but took bearings from two points from the Arkansas shore to one point on Island 76.

Int. 37. State whether or not the distance shown on that map is from the north end of Island 76 to the Mississippi shore, or from the south end of the island to the Mississippi shore, or from the center of the island to the Mississippi shore. How is it done, or are the bearings made to the Mississippi shore at all?

A. There are no bearings from the island to the Mississippi shore. There are only some bearings or triangulations taken from the Arkansas main shore towards several points on the Mississippi shore.

Int. 38. State whether or not there is anything on that map to show the distance from Island 76 at any point of it to the main shore of Mississippi.

A. There is nothing to show the distance from the Island 76 to the main shore of the State of Mississippi on the map.

Int. 39. Mr. McAndrews in his deposition states that it is 22½ chains from the east bank of the island across to the main shore of the Mississippi as shown on the map before you. Now, state whether or not there is anything on that map to show any measurement or any distances between the main shore of the island and the main shore of the Mississippi side.

262 A. There is nothing on this map to show any measurement whatever ascertained by survey which would indicate the island and the west shore of the State of Mississippi.

Int. 40. Is it, or not, impossible from that map, for an engineer to calculate the distance from any point on the eastern shore of Island 76 to the western shore of the main line of the State of Mississippi, and if so, explain how that can be done at this date without the actual measurement by triangulation or otherwise of the surveyor at the time of the survey and the map was made?

A. There is no possible way to calculate any distance between the island and the Mississippi main shore from this map. This map is not intended to *either* represent either of those banks by actual survey.

Int. 41. Any attempt then to give the exact distance from that point of the island to the main shore west of it, from the map and field notes as shown on the map, would be mere guess work and speculation?

A It would be guess work.

Int. 42. Now, Mr. Le Vasseur, on examination of the said map,

shore line and curvatures, etc. as given, where would you say the main channel of the Mississippi River would be?

A. Do you take for granted the western — of the Mississippi River is accurate on this map?

Int. 43. I do not know. What is your experience about this map?

A. I tell you it is pretty hard. If I take for granted those curvitures are correct, I say it is here.

Int. 44. Then from that map I understand you to say it would merely be guess work?

A. That would be only guess work.

Int. 45. Then if I understand you those water lines drawn there of the Mississippi side are merely sketched, and not expected to be correct?

A. No sir. Furthermore to tell exactly where the channel of the Mississippi River was during this time of this survey this map
263 does not show any data whatever about the topography of the stream. This map is only intended for a land map.

Int. 46. In speaking of the right and left bank of the Mississippi River how is that counted, going down the river or going up the river?

A. The right and left coming down the river.

Int. 47. I will ask you to please examine the map here shown you of fractional Sections 35 and 36, in Township 11 South, in base line range 1 east of the 5th principal meridian, and fractional sections 1 and 2, in Township 12 south of the base line, Range 1 east of the 5th principal meridian, which is certified to by Binger Hermann, Land Commissioner at Washington, and contains the following certification: "Surveyor's Office Little Rock, Ark. 23 December, 1846. The above plat of fractional sections 35 and 36 in Township 11 south of the base line, range 1 east of the 5th principal meridian, and fractional sections 1 and 2, township 12 south of the base line, range 1 east of the 5th principal meridian, is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved. The subdivision lines and meanders of Townships 11 and 12 south range, 1 east and southern boundary of fractional sections 35 and 36, Township 11 south range 1 east, amounting to 7 miles and 39 11/100 chains to the south range were surveyed in February, 1846 by John W. Garrettson, D. S., under contract of the 24th day of February, 1845, and were paid for by the treasurer of the United States upon accounts rendered and receipted by John W. Garrettson, D. S. (Signed) Wm Ralhaus, Surveyor of the Public Lands of Arkansas."

Now please state what that map and plat indicates relative to the position of Island 76, whether in the State of Arkansas or in the State of Mississippi.

A. This map indicates that the actual survey of the Island No. 76 was made, and this island was sectionized as being in the State of Arkansas.

Int. 48. I will ask that you please make that plat and map last above mentioned as part of your deposition, and file it here-
264 with as Exhibit B.

A. I do.

Int. 49. Taking that plat and assuming it to be correct at the time, from your experience as an engineer on the Mississippi River, how would you say that the crossing was made from the main shore of Arkansas to Island 76 by the surveyor? Please explain.

A. According to that map, the surveyor starts from a point west of Section 27 and across the territory between the main Arkansas bank and the west bank of the island by straight survey *azuinuth* and ground chaining on what is supposed to be a sand bar. At the time of the survey an examination could not have been possible as indicated on this map if any water having any depth would at the time of the survey have existed between the Arkansas main shore and the west shore of Island 76.

Int. 50. Looking at that map would you say that the crossing was made by the surveyor from the main shore of Arkansas to the west shore of Island 76 by triangulation or by actual chaining and survey?

A. By actual chaining.

Int. 51. What would that indicate as to that particular chute at that time as to the stage of the water, or whether it was the main channel of the chute, or a sand bar?

A. As indicated there would be a sand bar opposite the chute.

Int. 51½. From your experience as an engineer of the river would you say that the main channel of the river at that time was on the east or Mississippi side of the island or on the west side of the island between it and the Arkansas shore?

A. From the map, and for the reason that the territory between the Arkansas bank and the west shore of the island was a sand bar, I would state that the water on the Mississippi side must have at that time passed between the east side of Island 76 and the west bank of the State of Mississippi, wherever it may have been.

Int. 52. Mr. McAndrews in his deposition given in this case, in answer to Q. 28 states as follows: "Q. In case that the current or channel had been to the right of the island state whether or
265 not there would have been the caving bank on the Mississippi side just opposite Sections 4 and 5, Township 12, Range 1 east, or not." And he answers, "No sir, there would not." And he further states, "Further that the point shown on that map the salient point at X and Y on the Mississippi side would not have existed." Now, state whether or not from your experience of maps of the Mississippi River and surveys thereof, there is anything on that map that would show at that time a caving bank on the Mississippi shore opposite Sections 4 and 5.

A. There is nothing to show on that map or the map filed as Exhibit B to my deposition. There is nothing to indicate the caving bank.

Int. 53. Will you please give your reasons from your experience of maps of the Mississippi River, if you have anything to say in addition to what you have already said, the current of the Mississippi River did not pass through the chute where the survey is made west of Island 76 at the time of the survey?

A. From the map, Exhibit B. is forming an apex just about midway of the chute. If the Mississippi River would have gone through

the chute where there is sufficient current to form a channel, the west bank of the island would have been a concave instead of being rather convex at the time of the survey. The conformation of the island in regard to the main Arkansas bank seems to show that at the time of the survey the chute between Island 76 and the Arkansas main shore was a sand flat, and that the Mississippi River must have flowed across east of the island.

Int. 54. I will ask you again to look at the plat and Exhibit A to your deposition, and I will ask you to state—I will state that Mr. McAndrews is asked in his deposition, in answer to Question 28 as follows: "In case that the current or channel had been to the right of the island state whether or not there would have been the caving bank on the Mississippi side just opposite Sections 4 and 5, Township 12, Range 1 East or not." And he says, "No, there would not." And he further states, "That the points shown on the map, the salient points at X and Y on the Mississippi side would not have
266 existed." Now state whether there is anything on that map that would have shown a caving bank on the Mississippi shore opposite Sections 4 and 5.

A. I cannot answer that from this map because the Arkansas or Mississippi State line is only an approximate line, which is far from being accurate, and does not show any caving or the exact location of the banks.

Int. 55. Again, Mr. McAndrews is asked to state where the caving would have been in case the current had passed to the right of the island with reference to the Arkansas shore line, and he answers, "There would have been a caving bank and a concave bank of the river fronts of Section 27, Township 11, Range 1 East below the point marked 'D,' and a caving bank on the Arkansas side on the river front of Section 4-12-East." Now state whether or not such a state of affairs would have occurred in your experience of the Mississippi River.

A. No sir. If the Mississippi River would have flowed to the right of the Island 76 the Mississippi State bank line would have shown a deep pocket opposite 27. The Arkansas bank would have shown a caved bank at Section 34, and the Mississippi State bank would have certainly shown a caving bank for approximately from the foot of the Island 76 south to about Section 5.

Int. 56. From your experience with the maps of the Mississippi River is there anything by which you can judge accurately from the shore lines drawn as to whether the bank was a caving bank or not?

A. Not from this map.

Int. 57. Referring again to Exhibit B, plat to your deposition, I will ask you to examine in connection therewith a certified copy of the filed notes of that survey, which is certified to by S. E. Conway, Commissioner of State Lands, under date of December 3rd, 1903, and comparing the field notes aforesaid with said map Exhibit B, state whether or not you can tell whether that survey included Island 76 sectionized as part of the State of Arkansas, and explain it in your own way after looking over the same.

A. Those field notes are the notes of the survey made in
267 1846 of Island 76, also of the sectionizing of the said island, which places said island on that date as in Arkansas.

Int. 58. Will you please file said field notes as Exhibit C to your deposition, and as a part thereof?

A. I do.

Int. 59. In glancing over those field notes in connection with the map, Exhibit B, and you testified in regard to what Exhibit B shows. State whether or not those field notes sustain or carry out your views in regard to where the channel was at that time or not.

A. They do.

Int. 60. Have you or not heretofore examined those field notes in connection with the plates in this case?

A. I did.

Int. 61. Carefully?

A. Yes sir.

Int. 62. On the first page of said field notes, Exhibit C, there seems to be a rough diagram or plat of Island 76. I wish you would explain what the character of the chute between Island 76 and the State of Arkansas as indicated by the plat diagram on the field notes by the surveyor.

A. The chute between the island and the main bank of Arkansas according to the sketch, must have been dried and was at the time the sketch was made; that the bed of the river was east of the island, but the distance between the island and the Mississippi shore as shown on that sketch cannot be taken as correct, as no measure on the field notes is shown exactly by triangulation or otherwise the distance between the east bank of the island and the west bank of the State of Mississippi. The only distance shown accurately on this sketch and notes are the widths of the chute west of Island 76 and the Arkansas shore.

Int. 63. Please examine a plat here shown you, being all of Township 21, Range 8 West, Choctaw District, bearing the following certificate:

"The whole of this Township was surveyed by Benjamin
268 Griffin, Deputy Surveyor in January and February, 1830.
Surveyor's Office, Washington, Miss. May 31st, 1830.
Examined and Approved."
(Signed) JO. DUNBAR,
Surveyor Public Lands south of Tennessee, and registered,

October, 1830, and entered on the map, and exemplified to by Binger Hermann, Commissioner of Lands of the United States for the General Land Office of the Interior, dated Washington, D. C., Jan. 11th, 1899," and this map is further indentified by the names of Marshall J. Miller and Thos. W. Wilcox written in the lower left hand corner for certification. Will you please file said Exhibit, and make said plat a part of your deposition as Exhibit D hereto and a part heerof?

(Counsel for the defendants objects to the introduction of said map because it is not the complete map of said Township 21, Range

8 West of the Choctaw District of the State of Mississippi, but is only a portion [illegible]

A. I do.

Int. 64. Please examine said plat, Exhibit D to your deposition, and state from it what it appears to be, and from your experience as an engineer of the, — from the face of the map state where the channel of the Mississippi River was at its date with respect to Island 76, and whether or not the channel of the river was east or west of the island at its date according to the same.

A. This map, Exhibit D, is in relation to the channel of the Mississippi River in the same position as the map made Exhibit A. The hil-ography of the river is not shown on either of those maps, and for certainty the exact channel of the river cannot be determined by either maps. From examination of Exhibit D it seems to appear that the widest portion of the bed of the river at the time this map was made, was situated between the Mississippi side and the Island 76, but that is only an approximation, as on this map there is no data whatever about the hiliography of the river, and no data as
269 as to the exact width of the river, either between the State of Mississippi at that time and Island 76, or Island 76 and the bank of the State of Arkansas.

Int. 65. State from the face of that map and the field notes attached to it, on the Mississippi side at Township 21 there seems to be a survey and sectionizing of that Township complete up to the western bank of the Mississippi River, as touching the Mississippi side.

A. According to this map, it appears that the map represents the sectionizing or survey of Township 21, Range 8 West *in extenso* so far as it goes.

Int. 66. I will ask you to look again at said map, and state whether or not the channel of the Mississippi River as marked appears to be between the State of Mississippi and Island 76.

A. The Mississippi River channel is not marked on this map, but there is nothing about the channel on this map.

Int. 67. State what is marked there.

A. Only the word, "Mississippi River" is written between the Mississippi State bank and the eastern bank of Island 76.

Int. 68. Would that or not indicate from your experience that Island 76 was considered by the surveyor as belonging to the Arkansas side of the river?

A. I suppose from the map and the statement on the face of the map that the surveyor sectionized the whole of this Township 21, and that it was not in his mind that Island 76 belonged to Township 21, Range 8 West of the State of Mississippi, or he would have also sectionized said island. That is only an assumption on my part.

Int. 69. Please state the extent of your experience in the examination of old maps of the Mississippi River, and the present maps with reference to islands and cut-offs and, etc.

A. For the last 15 years I have been employed as engineer in most of the land cases where old maps and original data have been in question. I am now appointed by the State of Tennessee as con-

sulting engineer in the boundary discussion between the State of Arkansas and the State of Tennessee

270 Int. 70. Recurring again to Exhibit B to your deposition, Mr. McAndrews in his testimony also lays stress upon the fact that at the date of that map the channel of the river was west of Island 76 to the fact that on it there appears an arrow pointing down between Island 76 and the Arkansas shore. Now please state whether or not that arrow on these old maps is any specific indication as to where the channel of the river is, and what significance would you give to the position of the arrow on that map. Just explain it in your own way.

A. The old maps do not pretend to show in any manner, shape or form, where the channel of the river is or has been as the surveyor appointed by the land office has nothing whatever to do with the river proper, its channel, or its depth, but only had to survey and sectionize the territory for the State in which he has been appointed. It is a matter of impossibility for the old land office map to tell at the time of the survey where the channel of the Mississippi River was, or anything whatever about it, or the hil-ography of the stream. The arrow indicated on the map Exhibit B shows only that the Mississippi River was flowing daily in the direction of the arrow, and has nothing whatever to do with the channel of the river. This answer will apply also to the arrow shown on the map, Exhibit D.

Int. 71. Then if I understand you right, the pointing of the arrow on that map does not show where the actual channel of the river was, but the general direction of the river?

A. Yes sir.

Int. 72. Referring again to Exhibit B to your deposition, Mr. McAndrews in his deposition, in answer to Q. 33 has undertaken to state the distance at various points of Island 76 to the main shore of the Mississippi side, making his calculations from said map or a similar one. Now please state whether or not there is anything appearing on said map from the field notes, or otherwise, on which an engineer or surveyor could give, with any degree of accuracy the distance from the eastern shore of the island, to the western shore of Mississippi. If not, explain why not.

271 A. There is nothing shown on the map Exhibit B which will allow any surveyor to compute any accurate distance between the eastern shore of Island 76 and the main bank of the State of Mississippi. As I have already stated in my deposition the bank of the State of Mississippi is only sketched without any accurate measurement whatever from either the main bank of Arkansas or the east bank of Island 76.

Int. 73. Again Mr. McAndrews gives the shortest distance from the island to the Mississippi shore from a point opposite from the northwest corner of Section 24, Township 21, Range 8 as eight chains. And he gives the distance at the head of the island as designated on the map as 29 chains. Now, from the said map is it possible for an engineer to give these distances with any degree of accuracy?

A. I could not do it from Exhibit B. Such a thing could not be done from a map such as Exhibit B.

Int. 74. Could it be done from the maps shown as Exhibits A or D either?

A. From Exhibit A the distance between the main Arkansas shore or bank to the Mississippi shore could be computed at the points where the triangulations shown, but only at said points.

Int. 75. Then if I understand you it cannot be shown from the east side of the island to the Mississippi shore?

A. No sir.

Int. 76. I will ask you whether or not the reason that a chute is wider than where the main channel runs or whether one side is wider than the other is any indication as to where the channel of the river is.

A. The width of a chute is not in direct ratio with the channel of a river. Where the bed of a river is very wide, the bed is generally flat, and the channel at its least depths where the river is confined between banks a short distance apart it is generally where the biggest depths or the deepest channel is found.

Int. 77. Referring again to Exhibit B to your deposition,
272 Mr. McAndrews in his deposition states that independent of the arrow, the contour of the Arkansas bank and the bank of the island indicate the channel passed west of the island at the time the plat was made. I wish you would examine the plat and explain how this is possible to appear from the map itself.

A. In answer to this question I will refer to one of my previous answers, in which I stated that the conformation of the west bank of Island 76 tended to show that the main current of the river was not passing at the time the survey was made in Exhibit B through the chute between the west bank of Island 76 and the main Arkansas bank.

Int. 78. Will you please examine a map here shown you, purporting to be an additional map or plat of Township 21, Range 8 West, Choctaw District, made Exhibit — to Mr. McAndrews' deposition and in connection with his deposition, in respect to his measurements on said map? State your views in reference to the correctness of his deductions and calculations with respect thereto.

(It is agreed that the witness may answer this question subject to the right of cross-examination, and also that the answer will be direct to the question as to Mr. McAndrews' measurements and distances betwen the Island and the Mississippi bank, and whether or not from the map, it was possible to make such measurements.)

Cross-examination by Mr. A. Y. Scott, for Defendants:

Q. 1. Referring to the map filed as Exhibit A to your deposition, is it not possible for that map to state the distance from the Arkansas shore to the Mississippi shore, at several different points on the map?

A. Yes sir, I answered that question that wherever the triangulations were taken, taken for granted those triangulations are correct the distance from the Arkansas shore to the Mississippi shore can be obtained, but it can be obtained only at those points.

Q. 2. Now, the distance from the Arkansas shore to Island
273 76 is obtainable on the map at 3 different points, isn't it?

A. Yes sir, at A, B, and C.

Q. 3. Isn't it possible to get the distance from point marked A at the head of Island 76 to point marked D on the Mississippi shore?

A. Yes sir, by scaling. The only trouble I found in those triangulations are that the apex of the triangulations is very small. The base of the triangulations is so small that by skipping 3 or 400 feet would be detected.

Q. 4. So the distance can by scaling be ascertained from the point C at the south of the Island 76 to the point E on the Mississippi shore, can't it?

A. In the same way as from A to B.

Q. 5. While the triangulations on this map are not sufficiently close together to give the exact shore line, that was evidently the intention of the surveyor to approximate the Mississippi shore line, wasn't it?

A. Yes sir.

Q. 6. And when having determined the point on the Mississippi shore he sketched in the shore line in conformity to what he saw that it was at the time, didn't he?

A. Yes sir, he sketched it.

Q. 7. Then it is reasonable to suppose that that shore line is approximately correct, isn't it?

A. So far as the sketch goes.

Q. 8. I do not mean accurately correct as the Mississippi River Commission now makes its shore lines, but approximately, in that there would be a concave and convex bank at the places noted on the map?

A. As far as the contour of the State of Mississippi taking the point where the triangulations now take, I would as an engineer attach no significance whatever.

Q. 9. Simply because the triangulations were not sufficiently close together.

A. Yes sir, I would not pay any attention to them.

274 Q. 10. Then you do not think that the contour as given of the shore of Mississippi is sufficiently accurate to make any determination?

A. No sir.

Q. 11. In reply to a question of Captain Myers applicable to Island 76 as shown on plat Exhibit D to your deposition, you state that it was probably the idea of the engineer that Island 76 was not a part of the State of Mississippi, drawing your inference as I understand it that he did not plat the Island. Doesn't the same conclusion follow from the failure to plat the island by the engineer who made the plat Exhibit A to your deposition?

A. It is the same answer to the same question. In 1829 and 1832 that island was neither sectionized in Arkansas or Mississippi from the records in front of me. It may have been that during that period the island was only a very low sand bar beginning to be covered by small willows as it is the case along the Mississippi, and

neither the State of Arkansas or the State of Mississippi deemed it worth enough to claim it for its state. After 1832 that accretion must have become very large and in 1846 the surveyor of Arkansas had the island sectionized calling it Island 76, and from the records I have in front of me it is the first and only survey of the accretion.

Q. 12. You have not before you the map filed as Exhibit D to Mr. McAndrews' deposition in which Island 76 was sectionized in 1830 I believe the date is as a part of Township 21 Range 8 West, Bolivar County, Mississippi?

A. No sir.

Q. 13. You have never seen that map?

A. No sir.

Q. 14. If then the island was sectionized in 1830 by the surveyor the inference drawn from the maps before you as to the island not being sufficiently valuable to sectionize, would of course, not be correct?

A. Of course not.

Q. 15. Doesn't it appear that this plat filed as Exhibit D
275 to your deposition is of a fractional section?

A. No sir for the reason that the map carries with it a certificate from the Surveyor's office at Washington that the whole of this Township was surveyed by Mr. Griffin, D. S. in January and February, 1830, which seems to indicate from all that I have got before me that a whole survey of this Township 21, Range 8 West was made.

Q. 16. Doesn't this plat also have on it "also traverse and re-traverse of Island 76"?

A. Yes sir, but that was made in 1832.

Q. 17. But the plat itself does not show the traverse and re-traverse of Island 76?

A. No sir.

Q. 18. The Township as appears from the map only contains 35 sections, doesn't it?

A. Yes sir.

Q. 19. Doesn't that make it what would be termed a fractional section?

A. Yes sir, if all of it is in Mississippi. If the balance or a portion of it is in Arkansas of course, the Township will not be but 35 sections.

Q. 20. But it is a fractional section?

A. Yes sir.

Q. 21. You had no experience with the Mississippi River prior to 1890?

A. No sir.

Q. 22. Your answers here are not given from personal knowledge, but from the maps before you?

A. They are given by personal knowledge as engineer of the Mississippi River Commission.

Q. 23. I mean your testimony is based upon the maps themselves, and not upon any personal experience?

A. No sir, upon the maps. Of course, I can only testify to what the maps represent.

276 Redirect examination by Capt. D. E. MYERS:

Q. 1. Do your records or your experience show you at what date it was the island known as Old Napoleon, about 10 or 12 miles above Island 76 was washed away?

A. By personal experience no. It was before my coming on the Mississippi River, but from the records of the office I could give you the exact date.

Q. 2. Do you know where the position of Old Napoleon was?

A. Yes sir.

Q. 3. Would or not the sudden washing away of Old Napoleon force the channel of the river down through the chute west of Island 76 more or less?

A. Well, the sudden change of Old Napoleon would certainly affect all the regimen of the river below its location.

Q. 4. And the washing away of Old Napoleon would certainly throw the volume of the river west of Island 76?

A. It did this thing. The present Island 76 is to my knowledge not the original Island 76. The original Island 76 has been washed away, and what is called now Island 76 is a new formation made to the eastern bank of the original Island 76.

Q. 5. How do you know that?

A. Because I know it by personal observation.

Q. 6. Previous to the washing away of Old Napoleon there was a sand bar or chute between Island 76 and the Arkansas side, wasn't there?

A. Yes sir.

Q. 7. And as indicated the channel of the Mississippi River was really on the Mississippi side of the river before the period of the Old Napoleon being washed away. After the washing away of Old Napoleon the channel changed down on the Arkansas side?

A. It did.

Q. 8. In other words the channel changed from the Mississippi side of Island 76 to the Arkansas side?

A. It did.

277 Q. 9. You know what date that was done?

A. I could find out at the office. I have got no positive recollection. That was done at 76 to my knowledge.

Q. 10. Done at 76?

A. Yes sir.

Recross-examination by A. Y. SCOTT, for defendants:

Q. 1. You have no personal knowledge in regard to the whereabouts of the channel of the Island 76; you know where it is, at present?

A. Yes sir.

Q. 2. You have no personal knowledge of the channel prior to 1890?

A. No sir, except from the records of the office. We have got the records from 1874.

Q. 3. And it is only from that date that you know of the channel?

A. Yes sir.

Q. 4. Island 76 is now a part of the main shore of Mississippi, isn't it?

A. Yes sir.

Q. 5. And you state that none of the original Island 76 is remaining?

A. No sir. This is an accretion.

Q. 6. What is there now is an accretion, and is attached to the Mississippi shore?

A. Yes, but it was attached by accretion.

Redirect examination by Mr. D. E. MYERS, for complainant:

Q. 1. Is there a chute at high water running between Island 76 and the Mississippi shore?

A. Yes sir.

Q. 2. How wide is the chute between there?

278 A. I could not tell now, without looking at my records.

Q. 3. Between Island 76 and the Mississippi shore at this time?

A. I would have to look at my notes.

Q. 4. You have known the island personally since 1890?

A. Yes sir.

Q. 5. And previous to that you did not know of it?

A. No sir.

And further deponent sayeth not.

After reading over his deposition, the witness made the following statement:

After having read over my deposition as written out by the Notary, I find that I cannot sign and subscribe to it as it was given and written out, because in my answer to re-direct examination, Q. 4, page 28 I stated as appears that, "The present Island 76 is, to my knowledge, not original Island 76. The original Island 76 is a new formation made to the eastern bank of the original Island 76,"—and in re-cross examination by Mr. Scott, in answer to Questions 4, 5, and 6, I stated in substance that Island 76 is now a part of the main shore of Mississippi. That none of the original Island 76 is now remaining, but is now an accretion attached to the main shore of Mississippi—attached to the main shore of Mississippi by accretion.

When I made these statements I saw a look of amazement and incredulity flash over the face of counsel for both parties, so after closing my deposition I commenced thinking about it, and investigated the question and find that in making above statements I was entirely mistaken, and that at the particular moment my mind was directed to another island, to-wit, Dean's Island.

I now state that on reflection and investigation I find that I was utterly mistaken at the time, and correcting the same now state that Island 76 has not washed away or accreted to the Mississippi shore, but is intact as it existed in 1830 and 1836, and that the washout

the deposition of Mrs

12 South Range
of the Lines thereof
of Pub Lds

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of Old Napoleon caused the sudden change of the channel
279 from the eastern side of the island to the western side.
With this correction I sign this deposition.
(Signed) CHAS. LE VASSEUR.

Endorsed: Opened and published Nov. 13, 1905. W. P. Feild, Clerk, by W. Presley Feild, D. C.

280 4–207. T. P. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 7, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed photolithographic copy of plat of Ts. 11 & 12 S., R. 1 E., Fifth P. M., Arkansas, is a true and literal exemplification of the township plat to which it purports to relate, now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

[Seal United States General Land Office.]

BINGER HERMANN,
Commissioner of the General Land Office
and ex-Officio Surveyor-General of Arkansas.

[Endorsed:] Ex. A. Andrews.

(Here follows map marked page 280*a*.)

281 4-207. T. P. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 7, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed photolithographic copy of plat of Island in Ts. 11 & 12 S., R. 1 E., Fifth P. M., Arkansas, is a true and literal exemplification of the township plat to which it purports to relate, now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[Seal United States General Land Office.]

BINGER HERMANN,
Commissioner of the General Land Office
and ex-Officio Surveyor-General of Arkansas.

[Endorsed :] Ex. C. Andrews.

(Here follows map marked p. 281*a*.)

ellen.

Little Rock Ark 23° Dec 1846.

the Base line Range 1 East of the
Range 1 East of the 5th Prin Meder
ace which have been examined

Sections 35 & 36 Town 11 South Range
John M. Jamerson D. S. under con-
United States upon the accounts sen-
to office as per Voucher No 7. 4th

Wm Pelham

r of the Public Lands.

McLean.

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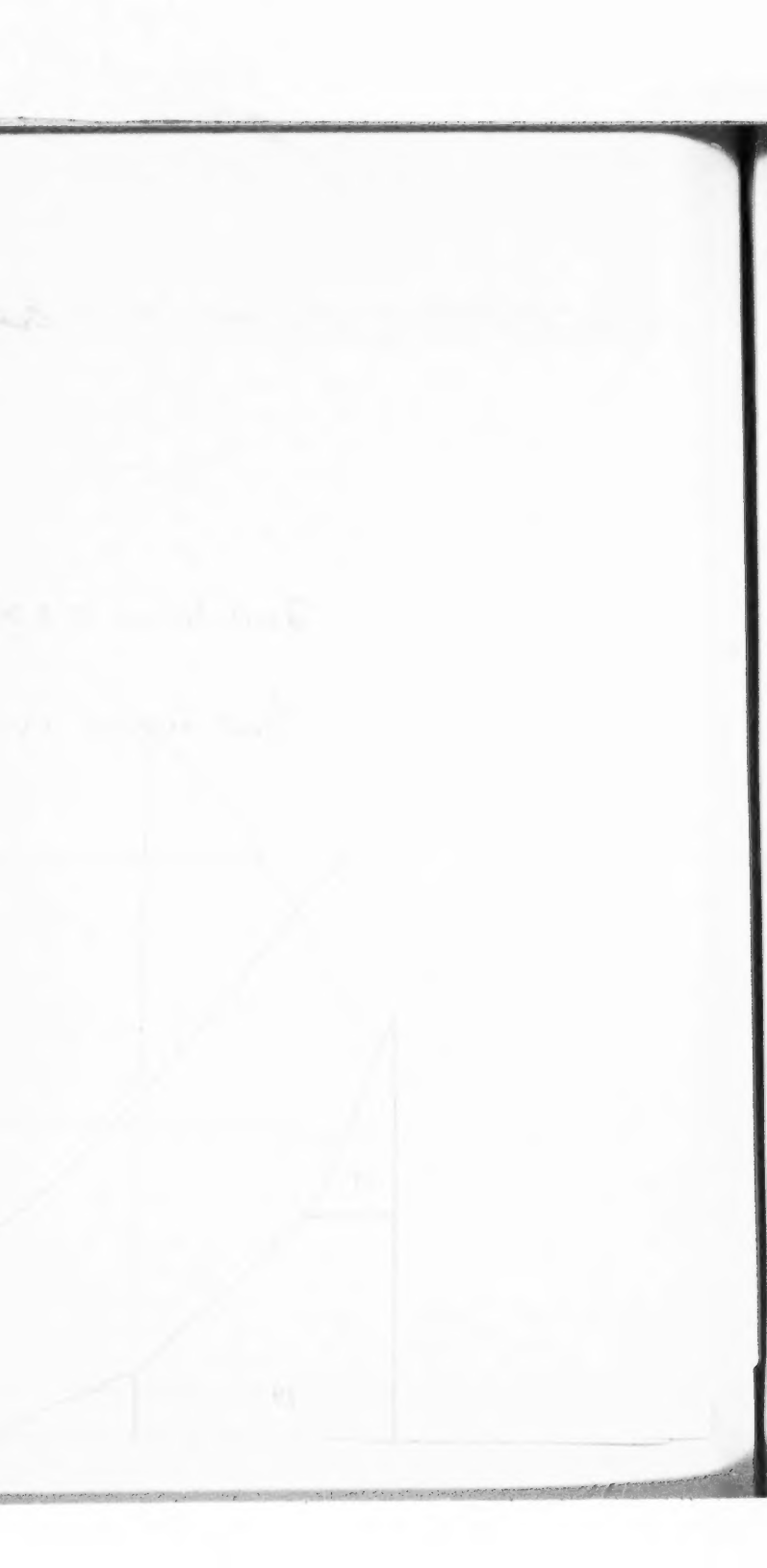
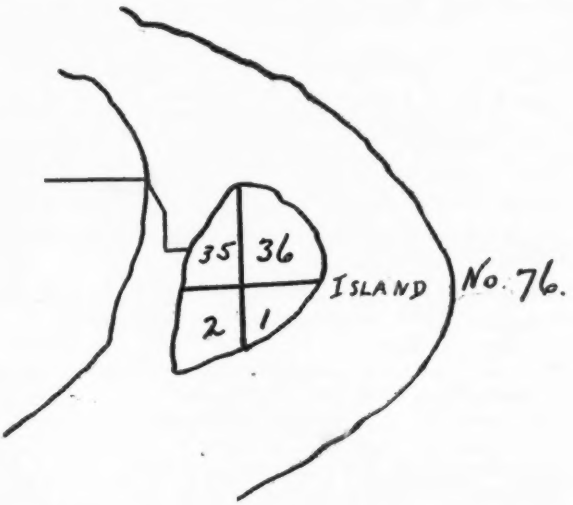


282 EXHIBIT "C" TO DEPOSITION OF CHAS. LE VASSUER.

Original Field Notes of Surveys
in
T. 12 S. R. 1 E. Frl. Sections 1 & 2. } Island No. 76.
T. 11 S. R. 1 E. Frl. Sections 35 & 36. }



February 7th, 1846. With David Garretson and William Given for chainmen and blazers, I go the line between Secs. 27 & 34 T 11 S. R 1 E. and run on said line to adjust my compass to said Township in order to survey the Island 76 which lies opposite to said Township the main channel being on the left or Mississippi side of said Island and the inhabitants of said Island vote and pay taxes in the State of Arkansas.

Chain compared. It agrees with the Standard.

With my compass at a variation of 6°–15 E. I commence at a fore and aft notched tree at 27.77 running East on the line between Secs. 27 & 34 T 11 S. R. 1 E. and run E.

At 12.26 chs. from the Sweet gum the fore and aft tree fell 2 lks. North of ¼ sec. cor. at 35.01 from ¼ section corner fell 9½ lks. North of the fract. sect. cor (noted at 75 chains) on bank of Mississippi river.

Thence I adjust my compass to a variation of 6° 5′ East. Thence from above corner which I count as 75.00 chs. East of corner to secs. 27. 28. 33 & 34 I run on sand bar in order to extend line across to Island.

283 Thence S 24½ E. 50.00
" S 18 W 21.00
" East 47.29 chains across the chute.

Distance across obtained by calculation (this channel is wide but

in low water it is very shallow when I passed down Decr. 27th. 1845 it was with difficulty I could get my skiff through this channel.)

Feb. 7th, 1846.

February 8th. Meander down right bank of Island 76

Thence S 23½ W. 15.84 chs. having made 80.00 chs. South Latitude, 68.02 chs. East Departure & 12.80 West Departure from the corner to fract. secs. 27 & 34 on the right and West bank of Mississippi River.

Set a post corner to fract. secs. 35 T 11 S. R 1 E. & 2 T 12 S. E 1 E. from which a

Pecan 30 ins dia. brs N 65 E 7¼ lks. and a

Hackberry 8 ins dia S 41½ E. 62½ lks.

Thence from above corner run East on a true line between secs 35 & 2 Townships 11 & 12 South R 1 E. being 50.22 chs. East of the point where the corner (to sects. 2 & 3 & 34 & 35 Townships 11 & 12 South Range 1 East) would fall from which corner I count the distance on this line.

60 00 Left an old field which entered a few links from fract. sect. corner.

65 00 An Elm 15 ins dia.

80 00 Set a post corner to sections 1.2.35 & 36 Townships 11 & 12 South Range 1 E. from which a
Hackberry 8 ins dia brs N 56½ W 21¼ lks.
Sweet gum 15 ins dia brs. N 29½ E. 19¼ lks.
Hackberry 6 ins dia brs S 36½ E. 62 lks.
Sycamore 10 ins dia brs S 51¼ W 41 lks.
Land first rate soil. Timber Cottonwood, Hackberry, Elm, Boxelder & undergrowth hackberry bushes and vines.

284 East on a true line between secs. 1 & 36 Ts. 11 & 12 S. R 1 E.

00 82 A Hackberry 8 ins dia.

40 00 Set a ¼ sec corner post from which
A Hackberry 6 ins dia brs N 62½ E. 19 lks and a
Mulberry 5 ins dia brs S 23 W. 33 lks.

47 25 To the river on the East side of the Island where set a post corner to fract. sects. 1 & 36 T 11 & 12 S. R 1 E. from which
A Cottonwood 9 ins dia. — N 37 W. 41 lks.
A Cottonwood 11 ins dia brs S 38½ W. 54½ lks.
Land 1st. rate soil mostly above overflow. Timber Cottonwood
Hackberry Mulberry Box-elder &c. Undergrowth Hackberry bushes
and vines.
South between secs, 1 & 2. T 12 S. R 1 E.

5 47 A Hackberry 12 ins dia.

40 00 Set a ¼ sec cor post from which a
Box-elder 8 ins dia brs N 6½ W 12 lks
Elm 13 ins dia brs S 60 E. 18¾ lks

43 58 A Box-elder 7 ins dia

51 50 To Mississippi River (on S. E. side of Island. River runs S W)
Where set a post cor to fract secs. 1 & 2 from which a
Cottonwood 20 ins dia brs N 48 W. 23¼ lks and
Box-elder 9 ins dia brs N 33½ E. 36 lks.
Land first rate soil. Timber Cottonwood, Hackberry, Box-elder Elm &c. Undergrowth principally Grade vines & rattan vines.
North between secs 35 & 36 T 11 S. R 1 E.
6 66 A Cottonwood 36 ins dia.
40 00 Set a post for ¼ sec cor from which an
Elm 6 ins dia brs N 32 W. 26¾ lks
Hackberry 5 ins dia brs S 10 E. 63½ lks
43 62 Entered George Crane's field, brs East & West
63 88 To the chimney of George Crane's house, brs N W & S E.
Thence offset West 50 lks
" North 112 "
65 00 285 " East 50 " regained the line North of Crane's House.
70 00 To Mississippi River a few chains East of the extreme Northern point of the Island where set a post corner to fracts.
sects. 35 & 36 from which
An Elm 11 ins dia marked B T brs East 130 lks
Cottonwood 20 ins dia brs S 24¼ E. 471 lks.

There is not any tree within 15.00 chains of the line on the West. Land first rate soil. Timber Cottonwood, Hackberry, Box-elder Elm &c. Undergrowth vines.

Thence Meander from above named corner to fract. secs. 35 & 36 down the right side of Island 76 through sect. 35 T 11 S R 1 E.

Thence West 1.50 chs.
" S 14 W 4.00
" S 7 E 4.00
" S 20¼ W 35.00 at 14.00 left field
" S 33 W 17.40 This course passes a house at about 10 chs
" S 23½ W 15.84 To the Corner to fract.

secs. 2 & 35 T 11 & 12 S. R 1 E.

Land first rate soil. Timber Cottonwood, Hackberry, Elm, &c. Undergrowth Hackberry *vines* & vines.

Thence Meander from Corner to fract. secs. 2 & 35 T 11 & 12 S R 1 E. on West side of Island down the Mississippi River through section 2 T 12 S. R 1 E.

Thence S 16¾ W 10.00 at 3.50 entered an old field without any fence
" S 12½ W 24.00 at 3.00 left old field
" S 23¼ W 22.00 set a temporary stake and quit work for this day.

The last course, viz: S 23½ W. Entered a field at 90 lks, & leaves it at 10.00 chs.

Chain compared. About ¼ of an inch too long. Take out rink

which adjusts it. Most of the notes of this date copied from a scrap of paper.

FEBRUARY 8TH, 1846.

Continue the above meanders from temporary stake.

286 Thence S 29 W. 16 chs. At 4.50 chs. on this course entered John Loving's field. Left it at 15.50

Thence S 43 W. 14 24 chs. to the lower point of the Island.

Thence up left hand chute of river.

" N 72 E. 27.00 chs. At 14.00 chs. on this course entered Loving's field & at 26.00 ch. J. Loving's house 100 lks to the left.

Thence N 69½ E. 21.50 chs.

" N 58½ E. 14.00

" N 66½ E. 6.88 to the cor. of frac. secs. 1 & 2. T 12 S. R 1 E. on S. E. side of the Island.

Land 1st. rate soil. Timber Cottonwood, Hackberry, Boxelder &c. Undergrowth Hackberry bushes vines &c.

Thence Meander from above named corner to fract. secs. 1 & 2 up the left hand Shute of Mississippi River through Section 1 T 12 S. R 1 E.

Thence N 58½ E. 15.00 chs.

" N 52¼ E 20.00

" N 39 E 25.00

" N 14½ E 12.34 chs to the cor. of fract. secs 1 & 36 T 11 & 12 S. R 1 E. on the East side of Island 76 on left hand chute or main channel of Mississippi River.

Land first rate soil. Timber Cottonwood, Hackberry, Boxelder, &c. Undergrowth Cottonwood bushes.

Meander from above named corner to fract. secs. 1 & 36 Townships 11 & 12 S. R 1 E. along up the main channel of Mississippi river through section 36 T 11 S. R 1 E.

Thence N 5¾ E 17.00 chs.

" N 11 W 9.50

" N 23¼ W 15.00

" N 39 W 27.00

" N 62 W 16.00

287 " N 81½ W 10.38 to the corner of fract. secs. 35 & 36 at the head of Island 76 on main channel of Mississippi River.

Land 1st. rate soil near the river subject to overflow from 2 to 4 ft. Timber and undergrowth mostly cottonwood.

February 9th 1846.

STATE OF ARKANSAS:

Office of Commissioner of State Lands.

LITTLE ROCK, ARK., *December 31st*, 1903.

I, F. E. Conway Commissioner of State Lands for the State of Arkansas do hereby certify that the annexed and foregoing four pages, being a transcript of the Original Field Notes of Survey of Island 76 in the Mississippi River, is a true and correct copy of said Original Field Notes on file in this office.

T. [illegible]

Eng. D. to Lessee

Marshal J. Miller
Thos. W. Wilcox

FOLD OUT IS TOO LARGE TO BE FILMED

In testimony whereof I have hereunto set my hand and official seal this 31st. day of Dec. 1903.

[SEAL.] (Signed) F. E. CONWAY,
Commissioner of State Lands.

Endorsed: Filed Dec. 5, 1905, W. P. Feild, Clerk.

288 4–207. T. P. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 7, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed photolithographic copy of plat of T. 21 N., R. 8 W., Choctaw Meridian, Mississippi, is a true and literal exemplification of the township plat to which it imports to relate, now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[Seal United States General Land Office.]

BINGER HERMANN,
Commissioner of the General Land Office
and ex-Officio Surveyor-General of Mississippi.

(Here follows map marked page 288*a*.)

289 *The Additional Deposition of Charles Le Vasseur.*

Q. State your name, age, residence and occupation?

A. Charles Le Vasseur; Civil Engineer; 53 years old; I live in Memphis, on Vance Street.

Q. Are you the same Charles Le Vasseur who has given a former deposition in this case?

A. I am.

Q. In your original deposition, Int. 78 in chief, you were asked as follows: "Will you please examine a map here shown you, purporting to be an additional map or plat of Township 21, Range 8 West, Choctaw District, and made Exhibit to Mr. McAndrews' deposition and filed with his deposition, in respect to his measurements of said land, and state your views in reference to the work, and to his deductions and calculations in respect thereto?" We note that you did not answer that question, and it is still left blank. Can you answer it now, and if not, why not?

A. I can answer only as to the map that is produced to me is concerned. That is by scan-ing the dimensions from shore to shore, and the dimensions from point to point on said map, taking for granted the plat as representing the accurate field notes of that survey, the field notes of that survey not being shown to me.

Q. Can you accurately answer the question without the field notes being before you, and state whether or not they are before you now?

A. I have not the field notes before me now. I can state only as to the scaling distances between the points on the map.

(By Mr. SCOTT:)

Q. You refer to this copy, do you not?

A. Yes sir.

Q. Recurring again to the width of the channel of the chute or whatever it may be called between Island 76 and the Mississippi shore, state whether or not the United States Mississippi River Commission has made an accurate survey and sounding of the width of the channel of the river and the depth thereof between Island 76 and the Mississippi shore about 1881?

A. Yes sir, since the survey was made by the Mississippi River Commission.

Q. Had such a survey as that been made before that time?

A. No sir, not of that character.

290 Q. I will ask you whether or not from the field notes and survey of the Mississippi River Commission of December 1881, you have made and prepared a sketch or a map showing *the* from the data of that survey, the exact condition of Island 76 with respect to the Mississippi shore and Arkansas shore?

A. I did.

Q. From what data did you obtain that information?

A. From the official records of the Mississippi River Commission.

Q. Did that include the field notes and surveys and triangulations and cross-sections of the river at that date?

A. It included all the original survey of that date.

Q. I will ask you to state whether or not you have drawn a plat of the condition of the river at Island 76 on both the western and eastern side-, including the depth of the river at various points, and the width thereof, and of the shores on that survey and the hydrographical survey of 1881 by the United States Government?

A. It is a copy of the official map made under the direction of the Mississippi River Commission in December 1881 from the field apograph, taking in the soundings, survey, triangulations and hydrography of the river.

Q. Do you consider it correct or not?

A. It is correct to my knowledge.

Q. If I understand you correctly you were not present at that survey and examination, but you took it from the official records of the United States Government as to that survey?

A. I did.

Q. I will ask you whether or not the map that you have drawn is correct in accordance with the field notes and survey?

A. It is an exact copy of the original map of such date made under the direction of the Mississippi River Commission.

Q. Will — please make that map that you have drawn as to the facts of the condition of that river at Island 76, and the land on each side of it in 1881, as surveyed and mapped by the Mississippi River Commission, Exhibit "A" to this your additional deposition?

A. I do, so, as requested.

Q. I notice on that map certain lines drawn on the eastern and western side of Island 76, and referring particularly to the
291 eastern shore of Island 76, I notice a peculiarly shaped formation at the head of Island 76 at that date, and I will ask you to explain what that means, whether it is a sand bar or a formation being created there or not at that date?

A. Yes sir, it represents the extent of the sand bar or mud bar formation under the head of Island 76 in 1881 showing above the land contour at the time of the survey.

Q. I notice on that map certain black lines, and take for instance the eastern black line marked by the figures 2400, 2450, 2500, 2550, 2600 and 2650. Please state what that line particularly represents, and what those numbers represent—I mean the extreme east black line?

A. The line represents the levee line of the Mississippi side, and the figures enumerate the stations along the levee.

Q. You mean the figures, 2450, etc. on the extreme eastern line represents the levee and stations on that levee?

A. I do so.

Q. Now, I notice on that plat an interior black line both on the Mississippi side and next to the Island. Now please explain what those lines represent at that time?

A. That line, the first black line west of the levee line represents the bank on the Mississippi side at the time of the survey.

Q. What does the interior black line, I mean the one west of the last line you have spoken of?

A. The second line west of the levee line represents the eastern boundary of Island 76 at the time of the survey.

Q. And the next black line what does it represent?

A. The third black line west of the levee line represents the west boundary of Island 76.

Q. I notice at the head of Island 76 a peculiarly shaped line in a triangular shape just at the head. Please explain what that is as shown by that map and survey of 1881?

A. That is the sand bar formation at the head of Island 76.

Q. You mean that that sand bar, that peculiar formation has been added to the land on top of Island 76?

A. I do.

Q. Please state, if you can, from that plat and map 1881
292 the width of the river, at the head of Island 76, or in other words at the head of the sand bar that you have last described at Island 76, between it and the Mississippi shore?

A. 1850 feet.

Q. Well from that line, do you mean that is the actual measurement.

A. Yes sir, the actual measurement.

Q. Now, I will ask you to take the distance between the eastern black line bordering on the Mississippi shore and the western black line bordering on Island 76 shore, and give me the depth of the river, first, below the line, and at the top of the head of the sand bar attached to Island 76, and carrying it on down through to Bolivar Landing?

A. You mean the maximum depth?

Q. I mean the actual depth given as shown on that map at the different points given, and mark your first one A, B, C, etc. on the side?

A. At A, from the sand bar towards the Mississippi shore, 21, comer, 23, 24. Range B, from the sand bar to the Mississippi shore 19, 21, 38, 44, 51.

Q. That shows the depth of the river as you go along?

A. Yes sir. On range C, Fractional range, 22, 34. On Range D, Neblett's Landing, 15, 19, 34, 48, 62; Range E, 21, 26, 34, 45, 49; Range F 28, 31, 44, 46, 56; Range G, 14, 27, 29, 32, 34, 42, 44; Range H, below Stormville Landing, 14, 33, 42, 49, 54; Range I, 14, 16, 41, 53, 72; Range J, 12, 27, 39, 46, 63, 42; Range L, 14, 21, 49, 54, 59; Range M just below the foot of Island 76, 77, 14, 56, 58, and, 59.

Q. I have noticed that you have given the various grades of depths around Island 76 on the eastern side, and they commence at a low depth and run to a high depth. Where does that low depth commence?

A. It is next to the Island on the Mississippi side.

Q. And these numbers that you have given represent the different of that channel at the particular points in 1881 by the Government survey and soundings?

A. It does.

Q. State whether or not you, under your personal supervision

made the survey of that channel you have just described on the eastern side of Island 76 was it made, by you or under your immediate supervision, including measurements, soundings, etc. State how it was?

293 A. The survey of the bank lines was made in November, 1899 under my direction, and are shown on the map by red lines.

Q. I notice on that map red lines embracing the distance from Bolivar Landing on down to the end of Island 76, and up to the head of it. State what that represents—I mean the red line marked?

A. The red line from Bolivar Landing upwards on the Mississippi side represents the extent of caving which took place between 1881 and 1899.

Q. You mean that represents the changes that were made on the east side of the Island 76 in the river from 1881 to 1899 under your survey in 1899?

A. It does, yes sir

Q. On that map, I will ask you to designate the width of that channel on the Mississippi side of Island 76 at the different points designated thereon—what the width is commencing at the south near Bolivar Landing, giving the width at that point, and marking it Number 1, and continuing out at every point where the width of the channel was taken in 1899, marking it respectively, 2, 3, 4, 5, and etc., or whatever the numbers go to?

A. Number 1 above Bolivar Landing in the chute, 700 feet; No. 2, 950 feet.

Q. You mean the width of the channel at that point?

A. Yes sir. No. 3, above Stormville Landing, 1000 feet; No. 4, 700 feet. is about 2000 feet below the mouth of Vermillion Lake.

Q. I will ask you whether or not that channel represented by red lines from No. 1 as marked by you to No. 4 should have indicated the water in the width of that channel?

A. Those dimensions from No. 1 to No. 4 are the channel between the western Mississippi shore and the eastern boundary of Island 76, and show the space at the time of the survey covered by water.

Q. Now, in that survey of 1899 from D or Neblett's Landing, north, state what the condition of that channel or chute was at that time with respect to sand bar or otherwise in November, 1899?

A. In November, 1899, from 150 feet below the mouth of Vermillion Lake to a point 2500 feet north, sand was existing and the condition of the chute was dry.

Q. What was the stage of the river, if you know in November, 1899, at Memphis, since you made that survey?

A. By the record of Memphis gauge official records, the highest gauge during the month of November, 1899 was 1-05 plus.

294 That means low water.

Q. That is pretty near down to zero?

A. One foot five tenths above it was.

Q. And it was during that month of November that you personally had that survey made and an examination of that chute or bend east of Island 76?

A. The date of the map shows it.

Q. Then if I understand you, that was at a time of extreme low water gauge on the Mississippi River?

A. That was at a time of low water gauge, or stage.

Q. Now, in speaking of that sand bar at the upper end of Island 76 on the Mississippi side what would have been the effect of a gauge of water at Memphis of say 12, 15, or 20 feet. Would that have covered that sand bar, and gone through the chute?

A. I think it would, yes sir.

Q. Do you know what the gauge of water is at Memphis at high water mark?

A. It was 39 prior to the closing of the St. Francis Levee. Now, it is only a guess. We do not know. It may be 44 and it may be 46, this is due to the closing of St. Francis basin.

Q. Well, you have said that a gauge of 15 feet at Memphis would have thrown the water over the sand bar at the head of Island 76 on the Mississippi side. Now, what would a gauge of 33 feet at Memphis have done?

A. Put more water on the sand bar.

Q. Would that put water enough on the sand bar to run steamboats over the sand bar?

A. I suppose so.

Q. I notice at the head of the chute in 1881, at the head of the ac-retions of the Island 76, the water was from 22 to 24 and 23 feet, and just below that on the Mississippi side it was 38 and 44 feet deep, and down to Neblett's on the Mississippi side 62, 44, and 18 and 19 feet, graduating back to Island 76. Was that the correct depth of the water at that time in December, I mean as shown by the Government calculations in December, 1881?

A. It is, yes sir.

Q. And the red lines within the black lines, are 700 feet, 1,000 feet 950 feet, and 700 feet, commencing at the head and going down was the width of the channel on the Mississippi side of Island 76 in 1899?

295 A. That is right, yes sir.

Q. Now, Mr. Le Vasseur, I notice that from the condition of that chute in 1881 by the Government survey and examination to 1899, when you made the survey, there has been a change. I will ask you whether or not that change does or does not show that there has been an addition by ac-retion to Island 76, as indicated by your statement, and the red lines next to the island of a sand bar formation to that Island. Explain that?

A. The eastern boundary limits of Island 76 have been increased by sand formation or deposit between December, 1881, and November, 1899 to the extent shown between the red line and the black line?

Q. I notice on the eastern formation of the black line and the red line, and by that I mean that next to the Mississippi shore, there has been some slight caving. Is that properly indicated by your map?

A. It is, yes sir.

Q. I will ask you whether or not most of the additions of sand bar indications, shown by the last survey of map of 1899, shows attached to the Island, and not to the western shore of Mississippi?

A. It is supposed to show attached to the eastern shore of Island 76.

Q. When did you last see that chute or channel between Island 76 and Mississippi?

A. In 1899.

Q. Island 76, was it or not then attached to the Mississippi shore except by the sand bar you have indicated?

A. Only by the sand bar when the water was low.

Q. And that was in extreme low water?

A. It was at the time the survey was made, the gauge was 1-05 at Memphis.

Q. You say the maximum in Memphis is about 39 feet?

A. Yes sir.

Q. Mr. LeVasseur, in your former deposition in this case in answer to re-examination, Int. 4, as follows: "The washing away of Old Napoleon would naturally throw a volume of water over Island 76, and it did this thing.

296 A. The present Island 76 is not the original Island 76. The original Island 76 has been washed away, and what is now called Island 76 is a new formation made at the eastern bank of the original Island 76.

Q. How do you know?

A. Because I know it by "personal observation" And in answer to re-cross examination by Mr. Scott, Q. 4, "Island 76 is now a part of the main shore of Mississippi, isn't it? A. Yes sir. Q. 5, And you state none of the original is remaining? A. No sir, that is an ac-retion. Q. 6, What there is now is an ac-retion and is attached to the Mississippi shore? A. Yes but it is attached by ac-retion." Now, whilst you have explained that in your deposition, Mr. Scott was not present to cross-examine you, and I will ask you again to explain those particular answers and state how that occurred, and whether or not they were the true state of facts with respect to Island 76?

A. I explained that in an additional note or whatever you call it, and I swore to it before a notary public, and that is attached to my first deposition, and will accurately explain about those questions and answers. I will refer you to it.

Q. Then if I understand you right Island 76 is not an ac-retion at all to the State of Mississippi?

A. No sir.

Cross-examination.

By Mr. A. Y. Scott:

Q. 1. In 1899 you made the survey referred to and plat, what was the channel of the *of the* river then?

A The channel followed by boats was on the west side of Island 76.

Q. 2. Was that the Mississippi River proper?

A. It was the Mississippi River channel proper at the time of the survey.

Q. 3. In 1899?

A. Yes. sir.

Q. 4. What was the channel of the Mississippi River in 1881 when the original survey was made by the government of which this plat is a copy?

A. From the examination of the records and soundings shown by that plat of 1881, two channels seem to have been existing, one on the east side, and that is the Mississippi side, between the
297 shore of Mississippi and the Island, and the other one between the west side of the Island and the Arkansas bank.

Q. 5. I would ask you to examine the plat where the depth of the river is noted, entirely across the river and just above the head of the island, and state on which side of the island the greatest depth is?

A. The greatest depth of the channel was at the head of the island.

Q. 6. Would that have necessarily meant that the deepest channel was west of the island.

A. No sir, because it is not.

Q. 7. Where did the greatest volume of water run in 1881?

A. West of the island.

Q. 8. The greatest amount of water ran west of the island in 1881?

A. Yes sir, according to that map.

Q. 9. Now, when you say the first line west of the levee line, the first black line west of the levee line in that plat indicates the Mississippi line of the main land?

A. Yes sir.

Q. 10. In 1899 when you made this survey as I understand you in low water there, there was no channel of the Mississippi River between Island 76 and the Mississippi main shore?

A. At the time of my survey the water of the Mississippi River was not flowing through the chute. It was stopped by the existence of a sand bar above this Neblett's Landing.

Q. 11. That means there was no channel to the east of the Island?

A. No flowing channel.

Q. 12. Do you know whether or not the Island 76 occupies now the same position that it did in 1830?

A. I do not, sir.

Q. 13. Do you know whether there has been any caving on the west side of the island—I mean is the island moving east by the caving of the island?

A. Yes sir, the island is moving east by the formation of sand bar surface. I can judge from the ac-retions from December, 1881 to November, 1899.

298 Q. 14. Do you know whether the west bank of the island has moved east or not?

A. The west bank has moved eastward also.

Q. 15. Do you know about how much?

A. I have not got a map here to state how much, but I think some.

Q 16. Have you ever attempted to ascertain how much the west bank of the Island had moved east since 1830?

A. No sir, I have not.

Q. 17. It has moved east?

A. Yes sir.

Q. 18. I will ask you if you place your scales through this copy of Exhibit "D" to Mr. McAndrew's deposition, being the completed plat of Township 21, Range 8 west, and if so, what did you find to be the narrowest point from the Island to the main shore of Mississippi according to that plat?

A. According to the plat by scale it shows the distance between the island and the main shore of Mississippi is at a point between lots 2 and 3 of Section 4, to which scale is as near as I can measure it, in the neighborhood of 530 feet.

Redirect examination.

By Capt. D. E. Myers:

Q. 1. Referring to your last answer, I will ask you whether or not from the map that is exhibited to you wherein you say the shortest distance is 530 feet; from the map itself and the plat itself, can you state that it is absolutely accurate?

A. I can say that the scaling distance between the eastern bank of the Island 76 and the western bank of Mississippi shore, and the point between lots 2 and 3 of Section 4, a distance is accurately scaled about 530 feet. I take for granted this map that is shown me is correct, or accurate.

Q. 2. Is there anything on that plat to show that that distance was ascertained by proper triangulations?

A. No sir, not shown on that, but this map is represented or supposed to be a correct representation of the field notes, and as I have not got the field notes to check by, I must take for granted
299 the field notes are correct, and this map is correct.

Q. 3. You do not know whether the map is correct or not?

A. No sir, I do not know, but I must take it for granted.

Q. 4. In your testimony, then, you take for granted that this map is absolutely correct?

A. I do.

Q. 5. And that the same point in Exhibit A to your deposition, at the same point, it shows 950 feet in 1899, doesn't it?

A. Yes sir, it does about.

Q. 6. And in 1881 about how many feet?

A. About 1,000 feet, or about 1200, 1200 feet.

Q. 7. Now, Mr. Levasseur, in connection with that, is there anything that this map or plat exhibit to you by Mr. Scott indicating the depth of water at that point of 525 feet?

A. No sir.

Q. 8. I will ask whether or not the width of the river at a particular point indicates the volume and amount of water that can pass through that channel without showing the depth of it, in other words can you tell whether it is 30 or 40 feet or 100 feet deep, or how is that?

A. Well, there is no depth shown on the map, and it would be very hard matter for me to state what would have been the depth of the chute at that time, or what would have been the depth in the channel west of the island.

Q. 9. I will ask you whether or not the volume of water passing through there, or that can pass through, a width of 528 feet of water, but doesn't it depend upon the depth of the channel as well as the width?

A. It depends on the depth and the velocity of the stream through that place.

Q. 10. Then unless you know the depth, if I understand you, it would be impossible to tell the volume of water that passed through a width of 530 feet?

A. It is a matter of impossibility to tell what the amount of water passed through a certain place of the river without knowing the depth.

300 By permission, complainant asks the following questions:

Q. 1. I will ask you, Mr. LeVasseur, whether or not there is any difference or distinction between a land surveyor, or sometimes called engineer, and surveyors or engineers running lines of levees, and engineering pertaining to the rivers. If there is any difference, please explain that. I will ask you first if you have read Mr. McAndrew's deposition?

A. No sir, I have not read it.

Q. 2. Is there any distinction between a land engineer or surveyor of lands, and an engineer of a levee board fixing the lines of levees, and the engineering under the Mississippi River Commission, fixing the depths, width, and contour of the banks of the Mississippi from a water stand point?

A. An engineer or surveyor, who call- himself an engineer who has only got his knowledge by experience, and is no graduate of any college, and only experienced in land surveying, and locating levees and constructing levees, is not entitled to be called a civil engineer. A civil engineer is a man who has been to some known college, and had practical experience, and who can place himself in position to be able to solve all the problems of the engineering profession which may be presented to him from running a land line, to the construction of a sky scraper, or bridge or anything. You may judge the difference between the two.

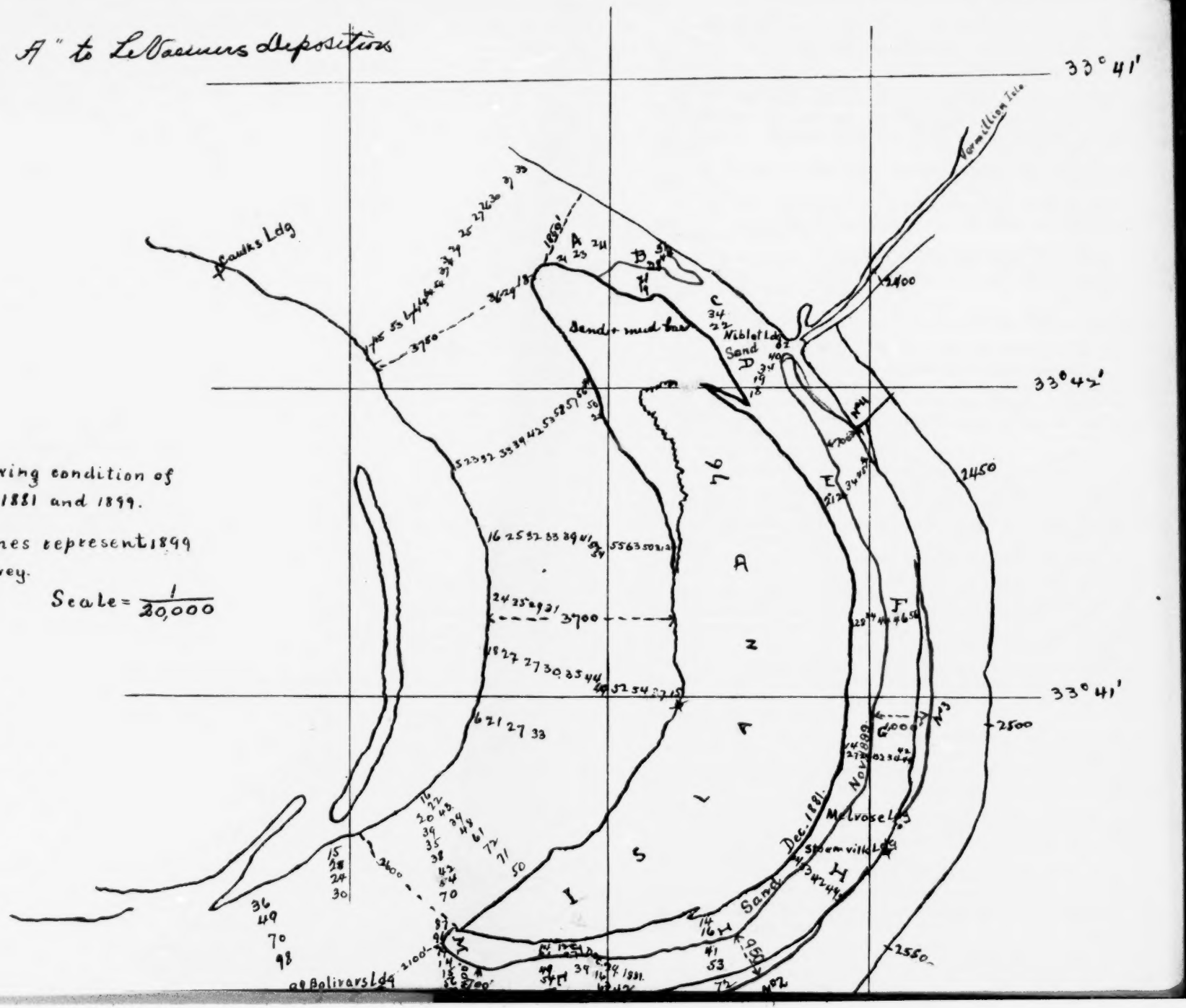
Q. 3. Now I will ask you this, in reference to the particular work of the Mississippi River in its transverses, and soundings and calculations and its shore lines, does it or not require a high degree of engineering ability or a higher degree than that of land surveying and levee contracting?

A. It does. Most of the men employed in government service in the Mississippi River Commission are what I would call civil engineers. They are not land surveyors.

Q. 4. Do you know Mr. McAndrews whose deposition has been given in this case, and if so, how long have you know him?

A. I met Mr. McAndrews several times, and have known him for about four or five years.

Exhibit "A" to LeBaumes deposition

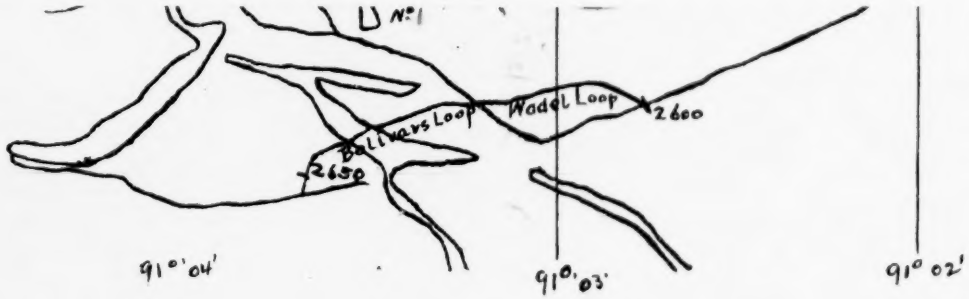


Sketch showing condition of Isl. No. 76 in 1881 and 1899.

Note. Red lines represent 1899 Survey.

Scale = $\frac{1}{20{,}000}$

Moore et al } p. 302
McQuown et al



Q. 5. Do you know about his competency as an engineer?

A. Hold on, you put that pretty close to me. I do not like to run down another man. You asked me if Mr. McAndrews is a
301 civil engineer, I will say no. He may be a competent surveyor.

Q. 6. Do you know where he is now?

A. I do not know where he is. I think he went to the Philip-ines, or intended to go there. I do not know where he went.

Q. 7. Well, now, I will ask you, although you do not want to say anything about a man, I will ask you whether or not he made application to the United States Government as a civil engineer, and what you know about that, and what was the result?

A. I know that Mr. McAndrews made application to come into the service as a civil engineer, and the application is a matter of record and also the result.

Q. 8. Well if you know that result, I will ask you what it is?

A. Well, I will tell you to go to the engineering office and see what it is.

Q. 9. Just tell what it was?

A. He did not pass the examination.

And further deponent sayeth not.

CHAS. LE VASSEUR.

Sworn and subscribed to before me this 11th day of December, 1905.

T. E. MOORE,
Notary Public.

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

(Here follows map marked p. 302.)

303 Mrs. L. M. BURRUS, a witness on behalf of the complainants, being duly sworn, testified as follows:

Q. What is your name, age, place of residence, and how long have you resided in Bolivar County?

A. My name is L. M. Burrus. My age will soon be 79. I now reside in Bolivar County, Mississippi. I came here in 1839 and remained here and stayed here during the winter, and then went back to Alabama, and stayed there two years, and then returned to Bolivar County. I have always lived within a few miles of the same place.

Q. Where did you reside; that is, in what part of the county did you reside, after you returned to Bolivar County from Alabama in 1841?

A. At Neblett's Landing.

Q. How long did you live at Neblett's Landing?

A. I think I lived there until the latter part of 1847, and then I went to Dr. Ross's and stayed there for a while.

Q. Have you seen and are you familiar with the location of Island No. 76, being the island near or opposite Neblett's Landing?

A. Yes sir, I am familiar with the situation and general appearance.

Q. State if you know where the channel of the Mississippi River was, from the time you came to Bolivar County in 1839, until you left Neblett's Landing. That is, on which side of Island 76 was the channel of the Mississippi River located at that time?

A. It was on the east side. The boats passed directly in front of our house.

Q. State whether or not the channel of the Mississippi River was generally regarded there, at the time when you lived near Neblett's or at Neblett's as being on the Mississippi side or on the eastern side of the island as you have just stated.

A. I think it was always considered on this side. I do not think boats could pass up the chute on the other side except in very high water.

Q. What was the usual and only means of communication
304 with foreign parts of the State during that time?

A. Steamboats. But there was a bridle path some time used for horseback traveling across the State.

Q. Where was the chute you speak of located?

A. It was on the other side of the island. On the Arkansas side of the island. The island extended a good deal further up. The island extended not quite as far south as Mr. Storms'.

Q. How was the river on the western or Arkansas side of the island generally spoken of by the people in the community at that time?

A. The chute.

Q. Do you know when the channel of the river changed from the east or Mississippi side of the Island No. 76 to the western or Arkansas side of that island?

A. No sir, I do not. The main body of the river was on this side when the war came on. I had moved back here. I did not live on the Front.

Mr. Scott's Cross-examination.

Q. About how old were you when you first came here in 1839?
A. I was in my 18th year.
Q. Did you come then on a visit?
A. No sir, I came down with my husband to spend the winter on his plantation and remained until spring, and then went back to my home in Huntsville.
Q. And then you returned some time after that?
A. Yes sir, about two years after that.
Q. And then you lived at Neblett's Landing?
A. Yes sir, I did, I lived at Neblett's Landing. My husband owned that tract of land.
Q. When you speak of the chute on the other side of the island were you ever up there?
A. No sir, I never was across the river, except one time, I got in a skiff, and rowed with my husband across the river;
305 partly across.
Q. The reason then you have for saying that the channel was on the Mississippi side of the island is that you saw the boats pass by?
A. Every day, every day, they always passed right by our door. I did not live as far back from the river as that gate.
Q. That was in 1841?
A. No sir, in 1841 up to '49.
Q. You do not know, Mrs. Burrus, of your own knowledge anything about the volume of water on the other side?
A. No sir, I know that it could not be used for the passage of boats except in very high water.
Q. You heard that?
A. No sir, I knew it.
Q. You never were over there.
A. No sir.
Q. You do not know then of your own personal knowledge upon which side the greater volume of water was.
A. No sir, only from what I heard. The boats could not pass there except in very high water. I knew nothing of it personally.
Q. Your memory, Mrs. Burrus, is not as good as it used to be, is it?
A. It is not, I remember things that happened in my youth, but I do not recollect things that happened a few days ago, but the fact of the river, I remember what I have told you perfectly.

And further deponent saith not.
(Signed) MRS. L. M. BURRUS.

Endorsed: Opened and published by order of Court Oct. 5, 1900. W. P. Feild, Clerk.

306 JOHN C. BURRUS, a witness on behalf of the complainants, being duly sworn, testified as follows:

Q. State your name, age, place of residence, and how long you have resided in Bolivar County, Mississippi.

A. Fifty-three years old on the 5th day of September, this month. J. C. Burrus name. Place of residence Egypt Ridge. I have resided on this place. We came here about '51 or '2, am not positive.

Q. Are you familiar with the Island No. 76, opposite or near Neblett's Landing, in the Mississippi River?

A. Yes sir.

Q. How long have you known that island, and are you familiar with it?

A. Well, ever since I was a boy, I have known the island.

Q. State if you know on which side of the Island 76 was the main channel of the Mississippi River, and whether any changes have occurred within your recollection, and when, answering clearly and fully as you can.

A. My first recollection of the island as far back as I recollect it was generally known and understood that the channel was on the Mississippi side, east side. In the fall of 1866 my brother Charles Burrus was merchandising at Melrose Landing on the side of the river, opposite the island, and I was employed to attend to the landing there for several months during that fall. The main channel of the river was on the Mississippi side then. The boats were light draft boats, some times pass up the chute, but no heavy draft boats ever passed up the chute. I attended landing in the fall of 1866 or 1867 at Neblett's for a man named Nelson and kept Neblett Landing. I stayed there and attended the landing about a month. The channel was on this side then, the main channel of the river. Now since that time I do not know when the change took place. My impression is about 1872, but this is not a personal knowledge. When the change commenced, it was a very rapid change. The island is very much further up the river now than it was when I first knew it.

307 Q. While you were engaged as landing keeper or landing clerk at Nebletts and at Melrose, did you have full opportunity of observing the river and of knowing and ascertaining the location of the channel around Island No. 76?

A. I think so, I was on the island several times. I have walked across to the other side. In 1866 or 1867 there was a man named Sterling who lived on the upper end of the island.

Q. What do you know, if anything, in regard to the depth of the water in the chute or of the portion of the river on the western side of Island No. 76?

A. Well, at that time in low water it was a very narrow, shallow, stream. No heavy boats ever passed through it, except in very high water.

Q. What direction were steamers going which passed through this chute on the western side of Island No. 76 in high water?

A. They were going up. Some of them were going both ways.

Q. Do you remember anything in regard to the location of the channel prior to 1860?

A. Well only from a boy's observation. The river was much larger and deeper on this side than it is now.

Q. How was the channel on the western or Arkansas side of the island universally spoken of from the time of your earliest recollection of the river up to about 1870 or 1871?

A. Always spoken of as the chute.

Q. How was the channel on the eastern side of the river generally spoken of during that same period?

A. I do not know. We designated the whole thing as the river.

Cross-examination by Mr. SCOTT:

Q. You have no distinct memory of the river earlier than 1866?

A. Yes sir, I have a very vivid recollection of that several years earlier.

308 Q. About what date?

A. Well the earliest date I can fix positively of the recollection of the river is, I think sir, '57.

Q. How old were you then?

A. Ten years old, sir.

Q. The first you know in regard to what you testified as to the channel of the river was a great many years after that, wasn't it?

A. Well it was to my personal konwledge, yes sir. It was 1866 before I had any personal knowledge.

Redirect examination:

Q. State whether or not you were living from the time of your boyhood until many years after the war, in the immediate neighborhood of the river around Island No. 76?

A. Yes sir, if you call this, immediate neighborhood.

Q. How far is this point from the channel around the island?

A. I judge about three miles by the road.

Q. State whether or not you had frequent occasion from 1857 until 1866 of seeing the river and of the steamers passing up and down that stream.

A. Well I can tell you. When I was a boy after '57 that I was frequently sent out to the river after the mail where Storms' old store was (Old Bolivar). I was frequently sent out there by my father and passed down the levee. During the war I think it was in 1864 I was placed on picket at Bolivar for some several weeks.

Q. During the war, state if you know, on which side of the island the fleets and federal boats passed.

A. In '63 or '64 I was placed on picket at Bolivar at the lower end of Island No. 76. I was placed there for the purpose of ascertaining the number of troops that went down the river, and the boats passed on this side. The water was low at that time.

And further deponent saith not.

(Signed) J. C. BURRUS.

Endorsed: Opened and published by order of Court Oct. 5, 1900. W. P. Feild, Clerk.

309 CLAUDE H. MOORE being first duly sworn testifies as follows:

Direct examination by D. E. MYERS:

Q. 1. Please state your name, age, residence and occupation.

Ans. My name is Claude H. Moore, 31 years old, am general manager for Moore & McFerren, Memphis is my place of residence.

Q. 2. What connection have you with the firm of Moore & McFerren, and how long have you been so engaged?

Ans. I am general manager for Moore & McFerren, have been with them 13 years. 8 of it as general manager.

Q. 3. State whether or not you know anything about the purchase by Moore & McFerren of Island No. 76, in the Mississippi River opposite Bolivar County, Mississippi. State when the purchase was made and from whom.

Ans. I closed the trade for Moore & McFerren with Judge Murphy's widow, Sallie H. Murphy, in Little Rock. This trade was started August 12th, 1898 and was closed August 22, 1898.

Q. 4. Will you please file herewith as exhibit "A" to your deposition the deed from Sallie H. Murphy to Moore & McFerren to the Island and make it a part of your deposition?

Ans. Yes sir.

Q. 5. Please state whether or not Moore & McFerren after purchasing the said island took possession of same and how and when and all about it.

Ans. Very shortly after the Island was purchased by Moore & McFerren we put Mr. O. L. Sanders in charge of it for Moore & McFerren, getting out logs and timber and looking after the Island for us. Mr. Sanders went ahead, cut hauled and delivered several hundred thousand feet of the logs during that year. He left the island sometime close to the first of January, temporarily to go back upon Arkansas River, because the island was wet and muddy. In the mean time he had left some logs and timber that he had cut on the island that he was unable to haul out on account of the mud. Along about August 1899 he returned to get the balance of the logs out. While he was gone I went to the island on the Steamer
310 Kate Adams and put Mr. G. W. Orton in charge of the island for Moore & McFerren, to look after the sawed logs and property there, to keep anyone from molesting the property. Mr. C. W. Orton remained in charge of the island up till a receiver, J. S. Ross took charge of said island. We were paying Mr. Orton $25.00 per year for his services. Mr. Orton had a job with the government also, and lived on the island so that he could look after the property without any trouble. He had a job with the government attending to the lighting of the lamps as the government requires him to keep them lit every night.

Q. 6. At what date in 1898 did Moore & McFerren take possession of that island and place Mr. Sanders there to cut and ship logs?

Ans. It was very shortly after the contract was made, it was August 12th, 1898, I should say two or three weeks later, which would be about September 1st, 1898.

Q. 7. State whether or not if, from about the first of September, 1898, when Moore & McFerren first took possession of the Island, they have been in possession since that time.

Ans. Yes sir. They have had it in possession continuously since or from the time Mr. Sanders was first put on the island till the Receiver, J. S. Ross took charge of it.

Q. 8. Was it the Receiver J. S. Ross in this cause?

Ans. Yes sir.

Q. 9. When you say Mr. Sanderson left the island about January 1899, state whether or not there was any property of Moore & McFerren there, besides the island itself State if there were any property of Moore & McFerren left on the island. State if there were any logs already cut, skiffs, boats, foundations for tents barns or what?

Ans. There was left on the island a skiff, and five or six hundred logs ready to haul, all the frame work for the barns and tent excepting the flies were there. We used cloth flies to go over the frame work that we left on the island.

311 Q. 10. You spoke of having employed Mr. C. W. Orton to take care of the island and property for you during a temporary absence of Mr. Sanders. Please state what was the occasion of your logging camp removing from the island in the spring of 1899, where it was removed and for what purpose.

Ans. Then it was muddy on Island 76, and we wanted to get out some logs up on the Arkansas River.

Q. 11. At what date about did you return to work on Island 76?

Ans. Sometime the latter part of July or August 1899.

Q. 12. Was there any party left there in charge of the island after Moore & McFerren moved their camp from island 76 to Arkansas River, in the spring of 1899, if so, who was it?

Ans. Mr. C. W. Orton was in charge all the time for Moore & McFerren.

Q. 13. State whether or not O. L. Sanders was agent down there during 1898 and 1899.

Ans. Yes sir he was put in charge of the island for us. Mr. Sanders also had a man by the name of Palmer Wilson that he left in charge of the island for Moore & McFerren.

Cross-examination of same witness by A. Y. Scott:

Cross Q. 1. When did you first go on Island 76?

Ans. On the 13th of Aug. 1898, one day later than this agreement.

C. Q. 2. You made that agreement and purchase with Mrs. Sallie Murphy did you not?

Ans. We made it with Mr. H. G. Martin who acted for Mrs. Murphy.

C. Q. 3. How long did you remain on the island at that time?

Ans. We stayed there one or two days.

C. Q. 4. When did you go back to the island again?

Ans. I was back and forth several times, but at just what dates I could not tell you.

C. Q. 5. When was the first time after August 13th, 1898 that you were back on the island.

Ans. I was there at a time which was between the first of September and the time that Mr. Sanders left, just what dates I
312 can't tell. I was there also on the island after Mr. Sanders left and put Mr. Orton in charge of the island.

C. Q. 6. How long did you remain each of the times that you went to the island between August 13th, and the time that Mr. Sanders left the island.

Ans. I remained over night excepting the time when I put Mr. Orton in charge. At that time I went up on the Kate Adams and talked to him while the boat was there and came back on the Kate Adams.

C. Q. 7. What date was it that Mr. Sanders left the island?

Ans. Somewheres about January 1st. Just exactly what date I don't know.

C. Q. 8. When were you next on the isalnd after January 1st?

Ans. I was there in the spring.

C. Q. 9. How long did you remain there then?

Ans. That was the time that I went up on the boat, saw Mr. Orton and remained on the boat talking to him while it was unloading some freight and then came back to Memphis.

C. Q. 10. Do you remember the date in the spring?

Ans. I imagine it was along about April or May.

C. Q. 11. How was it then that you in your original examination stated that you went up there sometime in August and put Mr. Orton in charge?

Ans. I did not state that. If I did, I didn't understand the question. As Mr. Sanders was in charge at that time, and I thought that that was what I was answering.

C. Q. 12. You spoke of frame work for barn and tent you mean just such frame work that is usually put up by wood cutters do you not?

Ans. I will describe them a little. The tent's frame work or rather the tents were floored in and walled up to about four or five feet high, and poles were put up over which to throw the fly for a roof. The barn was a frame work of poles so as to hold up the cloth part of the roof, and the stalls and mangers were made out of poles,
313 posts, and other stuff.

C. Q. 13. The island then remained without being in the possession of any one so far as Moore & McFerren are concerned from January the 1st, or thereabouts, the time that Mr. Sanders left to the time that Mr. Orton was put in charge?

Ans. No sir. Mr. Wilson was in charge also.

C. Q. 14. What is his name?

Ans. Palmer Wilson.

C. Q. 15. When did Mr. Palmer Wilson leave the island?

Ans. He left the island about 60 days ago.

C. Q. 16. Who was in charge of the island then for Moore & McFerren between January and August according to your statement, Mr. Wilson or Mr. Orton?

Ans. Both of them. We paid Mr. Orton though. These boys are living on the island, or were at that time, and we simply asked them to look after it for us, and we paid Mr. Orton for his trouble. Palmer Wilson never asked for any money.

Redirect examination by D. E. MYERS:

Q. 1. In your cross-examination you have been asked in regard to the employment, of Mr. C. W. Orton to hold possession of the island for Moore & McFerren and to look after the cut logs, timber, skiffs, etc, as well as the foundation of the stable and tents. Please state whether or not you have a letter or any communication from Mr. C. W. Orton in regard to his employment and the payment therefor, and in this connection please examine the letter here shown you dated Bolivar, Mississippi, November 27, 1899 to Mr. Moore. State in whose handwriting that letter is, whether you know the signature or not, and mark that letter Exhibit B. to your deposition.

Ans. Yes, it is a letter from Mr. C. W. Orton pertaining to the contract that I made with him, also to the payment of his services. It is in Mr. C. W. Orton's handwriting and it is his signature.

314 Q. 2. Is that the same C. W. Orton that you left in charge of the island?

Ans. Yes sir.

Q. 3. I also hand you another letter dated Bolivar, Mississippi, purporting to be from C. W. Orton in regard to the same matter, and to the payment for his services in watching the island and timber thereon, etc., please state in whose handwriting this is, whether you know it, and whose signature is attached thereto, and whether he is the same C. W. Orton whom you employed on the island.

Ans. It is in the handwriting of C. W. Orton, and is his signature and is from him And it is the same C. W. Orton who was employed to watch the island.

Q. 4. I also hand you a check dated Memphis, Tenn., 12/19/99, payable to the order of C. W. Orton for $25.00 on the First National Bank of Memphis, signed Moore & McFerren per C. H. M., on the back of which is indorsed, C. W. Orton, please state what that check was for.

Ans. This $25.00 check as above described was to pay C. W. Orton for his services for one year and for the time he was in charge of watching Island 76 for Moore & McFerren.

Q. 5. Whose signature is on the back of that?

Ans. Mr. C. W. Orton, the man that I had in charge of Island 76.

Q. 6. State whether or not that check was paid?

Ans. That check has been cashed through the First National Bank of Memphis, Tenn., and paid.

Q. 7. Will you please mark that check exhibit "D" to your deposition?

Ans. Yes sir.

Q. 8. Do you know where Mr. Orton is now?

Ans. Yes sir. I have a letter dated October 23, 1901, from Mr. C. W. Orton at Marysville, Idaho, stating that he was in the employ

of the American Land Co., of Pocatello, Idaho, and that he would be there for the next thirty days.

315 Q. 9. Do you know where he is now?

Ans. I don't know any further than that letter states.

Q. 10. Please mark that letter Exhibit E. to your deposition.

Ans. Yes sir.

Q. 11. Did I understand that when Mr. Sanders left the island he left Mr. Palmer Wilson in charge of it for Moore & McFerren?

Ans. Yes sir.

Q. 12. And Mr. Sanders was the agent of Moore & McFerren?

Ans. Yes sir.

Further deponent saith not.

CLAUD H. MOORE.

Indorsed: Opened & published by rule of Court, Dec. 11, 1901. W. P. Feild, Clerk.

For Exhibit "A" to this deposition see Folio 52 this Record.
For Exhibit "B" to this deposition see Folio 247 this Record.
For exhibit "C" to this deposition see Folio 248 this Record.
For Exhibit "D" to this deposition see Folio 246 this Record.
Exhibit "E" to this deposition is as follows:

MARYSVILLE, *Idaho*, 10/23/01.

Moore and McFerrin, Memphis, Tenn.

GENTLEMEN: Your favor of the 10—14 inst. received today after being forwarded from Ortonville, Minn. In reply will say that I am sorry that I am so far from a Ry. (23 miles) or I would wire you as directed in letter As it is I will drop you a few lines so that you in the future will have my address. A letter will reach me at any time directed to American Land Company of Pocatello, Idaho, J. H. Brady, Prest.

I will be at this place for the next thirty days, and will be glad to serve you at any time.

Very truly yours, C. W. ORTON.

316 O. L. SANDERS being first duly sworn testifies as follows:—

Direct examination by D. E. MYERS:

Q. 1. Please state your name, age, occupation and place of residence?

Ans. My name is O. L. Sanders, 29 years old, and I am agent for Moore & McFerren at Luxiroa, Ark.

Q. 2. Are you acquainted with Moore & McFerren and if so, how long have you known them?

Ans. I have been doing business with Moore & McFerren for the last seven years.

Q. 3. What, if anything, did you have to do with Island No. 76 in the Mississippi River in controversy in this case?

Ans. Moore & McFerren sent me to Island 76 in September or

October 1898 to cut and deliver logs and timber on the island to Arkansas City.

Q. 4. Was that the date you went to Island 76?

Ans. Yes sir.

Q. 5. State what you did from September 1898?

Ans. Went to the island to cut and haul timber.

Q. 6. Did you cut and haul, or raft much timber?

Ans. We cut and hauled several hundred logs.

Q. 7. Now give me what date you went there for Moore & McFerren to cut this timber and what date you left there.

Ans. We went there either in September or October 1898, and left there January or February 1899, I don't know when it was exactly, either January or February.

Q. 8. What was the occasion of your leaving that island at that time in January or February, 1899?

Ans. We quit hauling timber on the island for the reason that there was plenty of water in the Arkansas River to get logs out, and we wanted to leave the logs on the island for lower water, it was muddy on the island and we left there.

Q. 9. At that time did you leave the island permanently or temporarily?

Ans. Only temporarily.

317 Q. 10. Was it or not the intention of Moore & McFerren to return to the island when you left it? Return to Island 76?

Ans. Yes sir. We were to return just as soon as we got the logs off Arkansas River and we did.

Q. 11. When you left Island 76 in 1899, whom if any one, did you leave in charge and possession of the island for Moore & McFerren?

Ans. I left Mr. Wilson in charge of the island. I told him when I left to look after the timber that was cut, and to look after the other stuff which I left there, and to take care of it, and to write me how everything was getting along.

Q. 12. Did he or not write you then?

Ans. Yes sir, he wrote to me several times whilst I was away from the island.

Q. 13. Have you any of those letters?

Ans. I do not think I have.

Q. 14. Do you know whether or not Mr. Wilson took care of the island from the time you left in January or February, 1898, till you returned to the island?

Ans. Yes sir, he was on the island all the time; and he kept charge of the island.

Q. 15. Do you know whether or not Mr. Orton managed there?

Ans. Mr. Wilson told me that Mr. Orton stayed there with him, and Mr. Orton told me that Mr. Moore came there and told him to look after the island.

Q. 16. At what date did you return to the island and for what purpose?

Ans. We went back to the island in July or August 1899, for the purpose of cutting and hauling the rest of the timber and logs we had cut.

Q. 17. Were you the agent and representative of Moore & McFerren all this time?

Ans. Yes sir.

Q. 18. What property of Moore & McFerren in the way of logs cut, rafters, barns or skiffs or the foundations of houses or barns,
318 or anything else did you leave on the island when you left?

Ans. We left several hundred logs on the island, and we left a skiff also, and also foundations of our tents and corral house.

Q. 19. What do you mean by corral house?

Ans. Barns for the stock.

Q. 20. Describe the frame work of the barn?

Ans. The frame work of the barn was posts set down, and poles nailed up and rafters put in to hold up the fly to cover the stock.

Q. 21. Describe the tent arrangement?

Ans. The tents were walled up with planks, three or four feet high, posts set in the ground and planks nailed around them, and the tents were set on top of this.

Q. 22. If I understand you then, all you had to do when you returned was to spread the tents over your frames and you had your houses again completed.

Ans. Yes sir.

Q. 23. State whether or not you or your man were in charge and possession of the island in and about September 1898 until the Receiver who was appointed in this cause took charge of it.

Ans. Yes sir, we were in charge of the island all the time for Moore & McFerren.

Q. 24. Please state whether or not either yourself or the man you had left there for that purpose, were on the island and in possession of it all the time for Moore & McFerren from September 1898 until the receiver took charge in this case.

Ans. They were, yes sir. We were.

Q. 25. Have you any interest in this law suit whatever?

Ans. No sir.

Q. 26. When you returned there in July or August 1899 did you find the foundation of the tents and the frame work and the stables all there?

Ans. Yes sir. All there.

Q. 27. And the logs you had previously cut all there?
319 Ans. Yes sir. All there.

Cross-examination by A. Y. SCOTT:

Cross Q. 1. Do you know Mr. C. L. Jones?

Ans. Yes sir.

C. Q. 2. When did you first meet him?

Ans. I met Mr. Jones either in July or August, 1899.

C. Q. 3. Under what circumstances?

Ans. Mr. Jones was on the island when I met him.

C. Q. 4. You don't remember the date?

Ans. No sir. I don't.

And further deponent saith not.

O. L. SANDERS.

Indorsed: Opened & published by rule of Court Dec. 11, 1901. W. P. Feild, Clerk.

320 The following depositions were introduced and read on behalf of the defendants at the final hearing of this cause.

321 HUBERT WILSON, a witness on behalf of the defendants, being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Direct examination:

Int. 1. State your name, age, residence and occupation.

A. Hubert Wilson; age 29; Rosedale, Mississippi; Clerk.

Int. 2. State where you lived in August and September, 1899.

A. I lived in Rosedale, Mississippi.

Int. 3. State whether or not you know where Island 76 in the Mississippi River is, and whether you have ever been on said Island; and if you shall answer yes to this question, then state when, and under what circumstances, and in what capacity you went on said Island.

A. Well, I know where it is, and I went to Island 76 in September, about September 22nd, 1899, in the capacity of deputy sheriff.

Int. 4. What did you go there to do, and what did you do after you arrived there?

A. I went there to take possession of the timber that had been hauled and left on the bank, and also that had been rafted in the river, and attached the timber—levied on it.

Int. 5. State whether or not you did levy the replevin writ on the timber.

A. I did, yes, sir. Let me correct that, Mr. Scott. I said I levied this writ. Mr. L. E. Edwards went down with me and served the paper or made the replevin himself. He was the office deputy there at that time and he served the writ himself, and left me in charge.

Int. 6. At whose instance was the writ of replevin issued and against whom, if you remember?

A. At the instance of Mr. R. J. McGuire against Moore & McFerrin.

Int. 7. After the writ had been levied, as testified to by you, and you were placed in possession of the timber, state whether
322 or not you remained on the island; and if so, about how long?

A. I stayed there until about the last of November from September 22nd.

Int. 8. Where did you stay when on the island and with whom?

A. I stayed with Charley Jones, Palmer Wilson and his father.

Int. 9. State whether or not when you first went on the island, you met a man by the name of C. W. Orton?

A. I did.

Int. 10. State whether or not you ever had any conversation with the said Orton and in the presence of others relative to Mr. Jones taking possession of the island, and what Mr. Orton said at the time, so far as you can remember.

A. Well, I saw Mr. Orton when I first went there in September at Jones' camp and there had been, you might say, some excitement on the island trying to keep off trespassers, and I heard frequent conversations at the tent there at night and during the day, and the position that Mr. Orton always took was that he seemed anxious to keep the parties off the island, and Mr. Orton always took pleasure in telling of the part he had played trying to keep these parties off.

Int. 11. State whether or not at that time Mr. Orton ever pretended to have been in possession of Island 76 for Moore & McFerrin or any one else.

A. He did not.

Int. 12. State how long Mr. Orton remained with you and Mr. Jones and the Wilsons.

A. He stayed there possibly four or five days after I went down there—about that long.

Int. —. Did he then leave?

A. Yes, sir.

Int. 13. State where he went.

A. He went to Mr. Saunders' camp about 200 yards below us.

Int. 14. State whether or not you ever saw Mr. Orton again after he left the camp and went over to Mr. Saunders?

A. Yes, sir, I saw him frequently.

323 Int. 15. Did you ever have any further and other conversations with him?

A. Yes, I did; about four or five days after he moved down there—he left us and went down there to go to work for Saunders, or to see if he could get work down there; and about four or five days he came up to the camp to move some little traps he had there down to Mr. Saunders' camp.

Int. 16. State what, if anything he said in these conversations you had with him after he had moved down to Saunders' camp, relative to the island, and his holding possession there.

A. Well, I heard him state, after he had been down there—it was possibly two weeks after he had gone to Saunders' camp—he came very often from Saunders' camp up there, and we would set out and talk for a while. One night we met Orton out there and he stated that he had been in possession of the island for several months for Moore & McFerrin, and they had agreed to pay him $10.00 a month to hold possession of the island.

Int. 17. State whether or not you ever heard this stated to anyone, on the part of Mr. Orton, prior to his going to Saunders' camp.

A. I did not.

Int. 18. State whether or not it was a fact from the conversations you have retailed with Mr. Orton, prior to his going to the camp that you understood he had assisted to hold possession of the island, against all trespassers.

A. I heard him state frequently that he had helped Mr. Jones hold possession of the island.

Int. 19. State whether or not the shoot between Island 76 and the main shore can be crossed on foot, or horseback, at a low state of water.

A. Yes, it can be crossed at any place, while it might be possibly a short distance on that shoot that cannot be crossed on foot at a low stage of water. There is a deep hole in it at one place, but I think it is about three miles long and you can cross it at most any place on foot.

324 Cross-examination by D. E. MYERS, counsel for complainants:

Cross-Int. 1. You have stated that after Mr. Orton went to work for Mr. Saunders he told you and Mr. C. L. Jones that he had been placed in charge of the island by Moore & McFerrin, and that they were to pay him $10.00 a month for that service.

A. Yes, sir.

Cross-Int. 2. That he also stated in that conversation that he was to take charge of the island and protect any property or logs, or any property left on the island.

A. No, sir, he did not. He just stated that Moore & McFerrin had agreed to pay him $10.00 per month to hold possession of the island.

Cross-Int. 3. You say in low water you can walk or ride across the shoot?

A. Yes, sir.

Cross-Int. 4. Do you mean of this date? What do you mean, that is say later, or do you mean now?

A. Yes, it was that way in September, 1899; I rode across it; in fact, I have walked across it a hundred times, I guess.

Cross-Int. 5. You say September, 1899?

A. Yes, sir.

Cross-Int. 6. Were you ever on that island before that time?

A. Never was, no, sir.

Cross-Int. 7. Never lived near it?

A. No nearer than here.

Cross-Int. 8. You don't know on which side the island the main channel was in 1817, 1847 and 1878?

A. No, sir. In 1878 I should say it was where it is now. The growth of timber——

Cross-Int. 9. I am asking you of your own knowledge.

A. No, sir, I do not.

Cross-Int. 10. You stated that you and the deputy sheriff levied a writ of replevin on the logs that Moore & McFerrin had cut on the island, and also on the raft of logs in the river.

325 A. Yes sir, only the logs that had been hauled. I think there was from 60 to 80, and something like 300 logs in the river that they had rafted.

Cross Int. 11. You took them out of the possession of Moore & McFerrin?

A. Yes sir.

Cross Int. 12. The writ was levied at the instance of R. J. McGuire for the defendants, was it not?

A. Yes sir.

Cross Int. 13. And other defendants in this suit?

A. I suppose so; I understood it was at the instance of Mr. R. J. McGuire.

Cross Int. 13. Mr. Charles Scott, attorney, had it done, did he not, as attorney for the defendants?

A. Could not say; I only had my dealings with the sheriff.

Cross Int. 14. I say Mr. Charles Scott as attorney.

A. Yes sir, I think so.

Cross Int. 15. How long did you hold possession of that raft in the river?

A. Until November some time.

Cross Int. 16. What became of that raft of saw logs?

A. Moore & McFerrin gave bond for it and sold it.

Cross Int. 17. Is it not a fact that that raft was sunk while still in your possession?

A. No sir, it is not a fact.

Cross Int. 18. You don't know whether it was afterwards sunk or not then?

A. No sir, I do not.

Cross Int. 19. The raft was in pretty bad condition when you left there, was it not?

A. Short strong of it, yes sir.

Cross Int. 20. When you left they were all rafted out, were they not, and ready to move?

A. No sir, they only had about 300 logs rafted; I suppose something like 80 or 100 were not.

326 Cross Int. 21. Do you mean logs that were not rafted?

A. I do.

Cross Int. 22. Do you know exactly how many?

A. Yes sir.

Cross Int. 23. How many?

A. The writ will show.

Cross Int. 24. The writ will show the number?

A. Yes sir, the writ will show the number of logs in the river.

Redirect examination by A. Y. SCOTT:

Int. 1. You don't know whether any defendant in this case, except Mr. R. J. McGuire, was the complainant in that replevin writ.

A. No sir, I do not; I think he was the only one.

Int. 2. It was your understanding that he was the only one?

A. Yes sir.

Int. 3. You don't know whether Mr. Scott or O. G. McGuire represented him as attorney?

A. No sir, I do not.

Int. 4. In fact, you don't know who his attorneys were.

A. No sir.

Int. 5. Mr. Wilson, did you see the tents and corrals erected by Moore & McFerrin on the island while you were there?

A. Yes sir.

Int. 6. What kind of tent and corrals was it?

A. It was a newly erected concern; the tents were put up, none of them floored; I think one or two of the tents had a baseboard around at the bottom of the tent. The corrals were, you might say, a roughly

constructed arrangement, just a few cottonwood poles nailed up and spiked up—a place to keep their mules and feed, and fly thrown over it.

Recross-examination by D. E. MYERS:

Cross Int. 1. Who were the names of the plaintiffs in that
327 writ of replevin?

A. I don't think there was anyone except Mr. R. J. McGuire; that is my recollection now.

Cross Int. 2. Where is that writ?

A. I think it is in the Circuit Clerk's office.

Cross Int. 3. Can you look at that and refresh your memory and tell me now or this afternoon, or this evening who they were?

A. Yes. (Here witness goes for writ and returns, after which he testifies as follows.) I have examined the papers and find that they were issued at the instance of R. J. McGuire, who was the sole complainant.

Cross Int. 4. Now state, after refreshing your memory, how many logs and what property you levied on and took possession of under that writ.

A. I levied on 60 logs on the bank, and 350 in the river, and 800 in the woods.

Cross Int. 5. These 800 logs in the woods had been cut ready to haul, had they not?

A. Yes sir.

Cross Int. 6. When you say logs you mean saw logs, do you not?

A. Yes sir.

Redirect examination by A. Y. SCOTT:

Int. 1. State, by referring to the writ, at what the logs were valued on said writ.

A. $1415.00.

Int. 2. Itemize the value.

A. 60 logs on the bank valued at $90.00; 350 logs in raft valued at $525.00; 800 logs in woods on said island valued at $800.00.

Int. 3. State whether or not, when you went to the island, Mr. Wilson, there was a force cutting there at the time.

A. Yes sir, there was.

Int. 4. State whether or not that all of the logs levied on
328 by you and returned in this writ were newly cut lots.

A. They were.

Recross-examination by D. E. MYERS:

Cross Int. 1. Did you examine each log in the woods to see whether it had been cut recently, or whether it had been cut in the spring?

A. No sir, I did not examine them closely for that purpose. I was through the woods there and examined timber in the woods and know the old logs. You would just find one occasionally that was in a bad place, and could not be gotten to the wagons, and possibly they would — all around it, and the way they had thrown the trees they could not get to the logs, and they just left the logs; all the old timber I found in the woods.

Cross Int. 2. You found some old timber in the woods, did you?

A. Some few old logs in the woods.

Cross Int. 3. Can you tell how many?

A. No sir, I cannot state exactly.

Cross Int. 4. Now as to the raft, how can you tell whether all the logs in the raft had been just recently cut, or whether some of them had been cut in the spring of that year?

A. Well, it is a very easy matter for a man to tell if he knows anything about cottonwood timber whether it had been recently cut or whether it was old timber.

Cross Int. 5. Timber that was cut in the spring of the same year would not be old timber, would it?

A. No sir, it would not be exactly old, but it would be a very easy matter to tell it, however.

(Signed) HUBERT WILSON.

Endorsed: Filed May 22, 1902. W. P. Feild, Clerk.

329 ANDERSON HENCE, colored, a witness on behalf of the defendants being called, and after being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Direct examination by A. Y. SCOTT:

Int. 1. State your name, age, residence and occupation.

A. Anderson Hence, age 27; residence Neblett Plantation, farming.

Int. 2. Where did you live Anderson during the spring, summer and fall of 1899?

ANDERSON HENCE: Where did I live?

Mr. SCOTT: Yes.

A. At Caulk's Point, State of Arkansas.

Int. 3. How far is Caulk's Point from Island 76 in the Mississippi River?

A. It is about 2½ miles near as I can tell.

Int. 4. Have you ever been on Island 76?

A. Yes, sir, lots of times.

Int. 5. State whether or not you were on Island 76 any time during the spring, summer or fall of 1899?

A. Yes I was there, once and twice a week, most all the time.

Int. 6. State whether or not you know Mr. C. W. Orton, and how long you have known him?

A. Mr. Orton and I were good friends, and I knowed him a year, probably a year and something over a year, and he staid at my house lots of times, eat and drink there, and him and I worked together; him and I was real good friends.

Int. 7. State whether or not Anderson, Mr. Orton was in charge of the Government Light on Island 76?

A. Mr. Orton was not in charge of it. Mr. Palmer Wilson a young gentleman at Eutaw had the light in charge.

Int. 8. State who had charge of the light prior to Mr. Palmer Wilson's taking charge of it?

WITNESS: Before?

Mr. SCOTT: Yes.

330 A. I had charge of the light. Exactly I did not have charge of the light, but was hired to attend to the light before Mr. Palmer Wilson taken it. I was hired by —— who lives down there at Sotrm's place.

Int. 9. State, Anderson whether or not Mr. Orton ever had a conversation with you along in the fall of 1899 relative to Moore & McFerren not paying him for work he had performed at the camp for them, and state what he said in regard thereto.

A. Mr. Orton—him and I was working together; I helped him carry some timber down to Arkansas City; and we was a little short of money and was talking about it—kind of a business matter, and he said he did not have any money right then, and that Mr. Saunders owed him some and would not pay him because he would not say he was in charge of the Island, something of the kind, and he never did get it all up to the last I heard of him. He consulted a lawyer in regard to it when he went down to Arkansas City, and he fell out with them about it and because they wanted him to say that he was in charge of the Island.

Int. 10. I gather from what you say that the trouble was that Mr. Orton was unwilling to testify in this law suit that had been brought about the Island that he had had possession of the Island for them: Is this correct?

A. Yes, that was what he said, and he said that he would not do that because it was not so.

Int. 11. State whether or not Mr. Orton ever had possession of the Island for Moore & McFerren or any one else.

A. He did not; he had no possession of the Island at all, that is what he claimed he did not have possession, because he was on my place there a while, and he went on the bank and cleared up a little tent ground and he caught some lumber, and took it in down there at Bolivar, and got my brother to go down there and help him drag the lumber up on my place. At the time he was living on my place. If he had the Island in charge he would not say anything.

331 Int. 12. He never said anything to you about having possession of the island, although you were such good friends?

A. No, sir.

Int. 13. State whether or not the shoot between Island 76 and the main land of Mississippi, in a low state of water is dry and can be walked across and ridden across.

A. It can be ridden across sometimes yes sir.

Int. 14. Can you not walk across it when the water is low?

A. I never seen any one walk across it; I have seen them ride across it.

Cross-examination by D. E. MYERS:

The complainants by counsel specially reserving exceptions to all that part and parts of the foregoing deposition, which relates to conversations had between the witness and C. W. Orton as incompetent and irrelevant, as not being in the presence of any of the complainants and because hear-say. Waive cross examination.
ANDERSON HENCE.

Indorsed: Filed May 22, 1902. W. P. Feild, Clerk.

332 E. H. NALL, a witness on behalf of the defendants, being duly sworn, in answer to the interrogatories and cross-interrogatories propounded to him deposes as follows:

Direct examination by A. Y. SCOTT:

Int. 1. Please state your name, age, residence and occupation?
A. E. H. Nall; age 52; State Land Commissioner; Jackson, Mississippi.
Int. 2. State what records and other documents relative to the State lands you have under your custody and control as State Land Commissioner.
A. All records pertaining to State lands except the assessment rolls.
Int. 3. When was the State Land Office created, Mr. Nall?
A. By the Act of the Legislature of 1892.
Int. 4. Please examine the book in your office designated as "Tract Book, Swamp Lands, Grenada District, Commissioner of Swamp Lands," and state what that book contains.
A. It contains a record of the patents issued by the State of Mississippi to individuals of the swamp lands in the Grenada District, under Act of Congress of 1850, known as the General Swamp Land Act.
Int. 5. Please examine said record and ascertain whether or not the State of Mississippi ever issued a patent to all of Section 36, Township 21, Range 8 West, and all of Section 37, Township 21, Range 8 West, and if such patent was ever issued by the State please file with your deposition a certified copy of the record thereof, marking same as "Exhibit A" hereto for identification.
A. The record shows that the above land was patented by the State of Mississippi to W. G. Ford, January 9th, 1854, and I herewith file a certified copy from said record as "Exhibit A" to my deposition.
Int. 6. Please state, Mr. Nall, whether or not as part of the records of your office you have the original field notes of
333 the various surveys made by the Surveyor General for the District south of the State of Tennessee.
A. I have.
Int. 7. Please examine the book I now hand you and state what it contains, and what it is.
A. There are the original field notes.
Int. 8. Of what Township and Range, and of what survey?

A. They are in several Townships.

Int. 9. State whether or not that book contains the original field notes of a survey made by Benjamin Griffin, Deputy Surveyor, from August to October, 1830, of Township 21, Range 8 West in the State of Mississippi.

[8] [17]

A. Book [B] and Book [F]. These two original field book notes contain the original field notes of Sections 36 and 37, Township 21, Range 8 West.

Int. 10. Please file with your deposition hereto, marked as "Exhibit B," a certified copy of the entire field notes of Township 21, Range 8 West. Said certified copy being taken from the original survey above referred to.

A. I file certified copy herewith marked "Exhibit B."

Int. 11. Please state whether or not, Mr. Nall, you have on record in your office an official copy of a map of Township 21, Range 8 West, projected from said field notes of Benjamin Griffin, Deputy Surveyor, certified copy of which you have filed above to your deposition as "Exhibit B."

A. I have said map on file.

Int. 12. Please file with your deposition as "Exhibit C" thereto a certified copy of the map.

A. I file same as "Exhibit C."

Int. 13. Please examine the book I now hand you and state what it is, and whether or not it is a part of the records of your office.

A. State and Levee lands, marked Auditor's Office. De Soto, Bolivar, Coahoma and Issaquena Counties, and it constitutes a part of the records of my office.

334 Int. 14. State in a general way what that book contains.

A. The records of the State lands in Bolivar, De Soto, Coahoma and Issaquena Counties.

Int. 15. Please examine the record above referred to and state whether or not there were sold to the State of Mississippi on the 6th day of March, 1882, for delinquent taxes for the fiscal year 1881 among other lands, all of Section 36, Township 21, Range 8 West, and all of fractional Section 37, Township 21, Range 8 West, and if you should ascertain that said lands had been sold to the State as shown by said record, file with your deposition hereto a certified copy of said record showing said sale, and mark the same "Exhibit D" to your deposition.

A. I find the said sections were sold at that time and I file herewith a certified copy of said sale, marked "Exhibit D" to my deposition.

Int. 16. Please examine said record of State lands above referred to and state whether or not Section 36, Township 21, Range 8 West and Section 37, Township 21, Range 8 West, was ever afterwards sold to the State of Mississippi for delinquent taxes, stating in what year or years it was so sold, and file with your deposition, if you should ascertain that it had been so sold, a certified copy of the records showing same.

A. It appears upon the records to have been sold to the State March

5th, 1894, certified to by the Auditor of Public Accounts on the 15th day of April, 1896, as having passed the date of redemption.

Int. 17. Please file with your deposition as "Exhibit E" a certified copy of said sale of March 5th, 1894, delinquent for taxes of the fiscal year 1893.

A. I file herewith a certified copy of said record marked "Exhibit E" to my deposition.

Int. 18. Please examine the book I now hand you and state whether it is a part of the records of your office, and what it is.

A. It is a part of the records of my office and contains forfeited tax land remaining in the Auditor's office passed the date of
335 redemption and transferred to the State Land Office April 15th 1896.

Int. 19. Please examine said book and ascertain whether or not all of Section 36, Township 21, Range 8 West, and all of Section 37, Township 21, Range 8, was transferred to your office by the Auditor as unredeemed land.

A. It was on April 15th, 1896.

Int. 20. Please file with your deposition as "Exhibit F" thereto a certified copy of said record showing the transfer above referred to.

A. I file a certified copy herewith marked "Exhibit F."

Int. 21. Please examine your records and state whether or not after the transfer of all of Section 36 and all of Section 37, Township 21, Range 8 West from the Auditor's office to yours the State ever disposed of said land or not. If you should find said sale to have been made please file with your deposition a certified copy thereof, marked "Exhibit G" hereto.

A. The record shows the State sold all of Section 36 and Section 37, Township 21, Range 8 West under the description as appears in the certified copy from the records of my office, which I file herewith as "Exhibit G" to my deposition.

Cross examination by D. E. MYERS, of counsel for the complainants:

Cross Int. 1. In "Exhibit A" to your deposition is shown a record of a patent from the State to William G. Ford to Sections 36 and 37, Township 21, Range 8 West. Please state in what county or counties the records show that these lands were situated under said patent. Give each section separate.

A. It does not give the county.

Cross Int. 2. In "Exhibit B" to your deposition you propose to file a certified copy of the survey of Township 21, Range 8 West, state whether or not that exhibit is contained in two separate books.

336 A. Yes sir, it is.

Cross Int. 3. In making up and filing that "Exhibit B" will you please make the books separate, or in other words clearly
[17]
show exactly what appears on book [F]. Make up separately so clearly distinguishable under separate certificate what appears on said
[17] [17]
book [F] and also make up separate and distinct from book [F]

what appears on said book [8] [B]. Make under separate certificate.
A. I will.

Cross Int. 4. State whether or not in book [8] [B] which you have referred to there is not sealed in at the beginning of Township 21, Range 8 West on a separate slip of paper apparently in a different handwriting from the original notes.

A. I should say it was in the same handwriting.

Cross Int. 5. Is there any date to that separate slip of paper?

A. It appears to have no date.

Cross Int. 6. Will you in making up the copy designate specially what is contained on that little slip of paper, and describe the size of it?

A. Yes sir.

Cross Int. 7. Please look at said memorandum book [8] [B] which you propose to exhibit, at the close of the description of Township 22, Range 8 West, or Section 36 and Section 37, Township 21, Range 8 West and state whether or not the following paragraph, to-wit: "Soil very good except a few chs on the latter part," and state whether or not that does not appear in ink blacker and seemingly of a more recent date than the rest of the description.

A. No, sir. I don't see how you would get a more recent date out of that. It is blacker ink, but it does not seem of a later date.

Cross Int. 8. Is not that paragraph in blacker and fresher ink than the rest of the description?

A. It appears blacker, not fresher.

Cross Int. 9. At the end of the description of said property in controversy in said book [8] [B] it does not appear that the Deputy
337 Surveyor Benjamin Griffin signed his name to the end of that survey of Sections 36 and 37, Township 21, Range 8 West

A. It does not.

Cross Int. 10. Please look at the same book at Township 22, Range 9 West, and state whether or not the following does not appear "Finis, Township 22, Range 9 West, 1830 November 1st. (Signed) Benjamin Griffin."

A. It so appears.

Cross Int. 11. Please look on the same book [8] [B] as to the notes on Township 21, Range 10 West and state whether or not at the end of that description Benjamin Griffin, Deputy Surveyor, did not sign his name and also give the chain carriers.

A. It is signed by Benjamin Griffin, Deputy Surveyor and signed by Nathan L. Brown and Samuel McJunkins, chain carriers.

Cross Int. 12. Please look in the same book [8] [B] in the notes as to the survey of Township 21, Range 9 West, and state whether or not at the end of that description Benjamin Griffin signed the same as Deputy Surveyor.

A. It is signed Benjamin Griffin.

Cross Int. 13. Have you any personal knowledge of said book [8] [B] except as you find it in your office when you came into the office that you now occupy?

A. No.

Cross Int. 14. Please look to your Exhibit called for by the defendants from book [17] [F] where it commences, which purports to describe a survey of Township 21, Range 8 West, and state whether or not it is not signed, surveyed by Benjamin Griffin, D. S., January and February 1830.

A. It does.

Cross Int. 15. Please state whether or not you know anything about the authenticity or correctness of your personal knowledge of either of said books [17] [F] or [8] [B] except as you found them in your office before they were turned over to you when you came into your office as State Land Commissioner.

A. No.

338 Cross Int. 16. In your deposition you have made an "Exhibit C" purporting to be a copy of the plat as appears in your office of Township 21, Range 8 West. Please state whether or not you know anything personally about the correctness of that plat, except as appears from your books.

A. I do not.

Cross Int. 17. Do you know at what date that plat book first came into the office of the State Land Commissioner?

A. No sir.

Cross Int. 18. Is there anything on the original plat to show it?

A. No sir.

Cross Int. 19. From the date of the original survey of Township 21, Range 8 West do you know whether or not the plat was subsequently changed? If so, about what date and under whose direction?

A. I do not know.

Cross Int. 20. State whether you know at what date the subdivision of Island 76, as appears on "Exhibit C" was actually made?

A. I do not know the date.

Cross Int. 21. That sub-division was made by the State of Mississippi subsequent to the date of the original survey by Benjamin Griffin, was it not?

A. I do not know.

Re-direct examination by Mr. SCOTT:

Int. 1. Examine the field note book [8] [B] at "Traverse of Island 76," and examine piece of paper attached thereto about which you have been cross-examined by Col. Myers, and state whether or not the paper and writing does not appear to be of the same as the rest of the book.

A. It appears so to me.

[8] [17]

Int. 2. Field notes [B] and [F] constitute part of the records of your office, and you have only the same personal knowledge relative to them that you have relative to all of the other records of this office. Is that not the case?

339

A. Yes sir.

Int. 3. Examine the copy of the map attached to your deposition as "Exhibit C" and state whether or not the entire map and subdivision does not purport to have been approved May 31st 1830, by Joseph Dunbar, Surveyor South of Tennessee.

A. It does.

Int. 4. You should then state that the map in your possession from which that copy is taken as a map was completed as of May 31st, 1830, should you not?

A. It appears so from the record.

Further deponent saith not.

(Signed) E. H. NALL,
Land Commissioner.

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Clerk, by W. Presley Feild, D. C.

EXHIBIT A.

Township No. 21 N., Range No. 8 West.

Description of tract.				Contents.		Rate per acre.	Amount.	Name of purchaser or locator.	Date of sale.	Scrip.	Date of location.	No. war.	No. ctf.	No. Pat.	To whom patented.	Date of patent.
Part of section.	Sec.	Twp.	Range.	Acres.	Hun.					To what county issued.						
* *	..	21	8 W.	*	*	$ Cts. * *	$ Cts. * *	* *	*	*	*	*	*	*	*	*
(Island 76) the whole of..	36	"	"	674	20	.....	.....	Wm. G. Ford.	..	Tunica & Issaquena.	Jan'y 9, 1854	712 705 6042 & 704	..	..	Wm. G. Ford..	Jan'y 9, 1854
* *	*	*	*	*	*	* *	* *	* *	*	*	*	*	*	*	*	*
(Island 76) the whole of..	37	"	"	234	38	.....	234 38	Wm. G. Ford	..	Coahoma .	Jan'y 9, 1854	3654 3670	..	..	Wm. G. Ford..	Jan'y 9, 1854

I, E. H. Nall, Land Commissioner and having in my official keeping as such the records of the State Land Office do hereby certify that the above and foregoing writing and drawing is a true and correct copy of and from the record book in my custody styled and labeled "Tract book" "Swamp Lands" "Grenada District" "Commissioner Swamp Lands" and on page 224 of the said Book.

Given under my hand and official seal at Jackson, Mississippi the 13th day of May A. D. 1902.

[SEAL.]

E. H. NALL,
Land Commissioner.

Endorsed: Filed Nov. 24, 1905. W. P. Feild, Clerk.

341 EXHIBIT "B."

District of Mississippi.

Field notes [8/B]

Course.	Distance. Ch.	Lk.

Field Notes of Township No. 22, in Range 8 West in the Choctaw District—State of Mississippi—Surv'd by Benjamin Griffin, Dep. Surv.

1830. T. 22, R. 8 W.

Traverse of Island 76 beginning at the upper end.

St.	Course.		Dis. Ch.	Lks.	
1	S 28½	W.	44	"	Island 76 is in T. 21, R. 8 W & not in T. 22 R 8 W. and that instead Sections 6 & 7 should be Sections 3, 6 & 37 T. 21, R. 8 W. This Island is properly within Township No. 21 in Range 8 West. Distance X the shoot of Island 76 from the beginning of the last St. N. 40 E 2920 intersecting the opposite traverse 26 ch. on the 1st St.
2	S. 38½	W	5.		
3	S 10½	W	73.		
4	S. 28½	W.	22.		
5	S 48½	W	9.		
6	S 38½	W.	17.		
7	S 68½	W	5.		
8	S. 57½	E.	3.		
9	N 82½	E.	27.		
10	N 68½	E	26.		
11	N 58½	E	49.		

NOTE.—This attached piece of paper as attached to the original is 3⅛ inches by 4 inches.

E. N. NALL,
Land Commissioner.

St.	Course.		Dis.	
12	N 38½	E.	32.	Part of the Traverse of Island No. 76. See note on the last page. C.
13	N 10½	E	25.	
14	N 11½	W	20.	
15	N 25½	W	25	
16	N 42½	W	27	
17	N 56½	W	12	
18	West		7.	

* * * * * * *

Beginning at the upper end of * 36 in Island 7656 (Island 76) we ran S. 28½ W. at 30 ch. set a post.

342 Br. Ellum S. 74, E. 128 lks.
trees H. berry S. 41, E. 125 lks.

At 35 ch. center case above highwater mark at 40 ch. set L post.
Br. H. berry S. 77, E. 3 lks.
trees Ellum S 1, E. 4 lks.

---

*Section should be Section 36, T. 21, R. 8 W.

At 44 ch changed the course to S. 38½ W.
At 5 ch changed the course to S. 10½ W.
At 1 ch set L post Br. Sickamore S. 68 E 10 lks.
trees H. berry N. 55 E. 10 lks.
At 11 ch. set L post Br. Elum N 62 E 7 lks.
trees H. berry S. 42 E. 113 lks.
At 21 ch. set L post Br. Ellum N 1 W 107 lks.
trees Gum S. 44 W. 130 lks.
At 31 ch. set L post Br. H. berry N 1 W. 65 lks.
trees Ditto S 69 W 29 lks.
At 35 chs. left the cain.
At 41 ch set L post Br. Hc. berry N 46 E 28 links
trees Ditto S 21 W. 20 lks
At 51 ch set S post Br. Ellum S 4 E 26 lks
trees Hc berry N 13 E 31 lks.

Beginning at the S. W. corner of S. 6, We. E and S 57 E.
At 58 24 set S. post Br. Cottonwood N 68 W. 21 lks
trees Ditto N 6 W. 13 lks.

This line was open woods with vines & briars, in places above high water mark, overflow from 1 to 4 feet, soil good.

Beginning at the S. E. corner of Sec 6, we ran N 58½ E. At 12 ch. changed the course to N 38½ E.
At 7 ch set L. post Br. Cotton N 59 W. 9 lk-.
trees Ditto N 7 W 11 lks.
At 23 ch set L. post Br. Cottonwood S 45 W. 10 lks
trees Willow N 16 W 12 lks.
At 32 ch. changed the course to N. 10½ E.
At 3 ch set L. post Br. Cottonwood N 54 W. 26 lks.
trees Ditto S. 86 W. 32 lks.
At 14 ch set L. post Br. willow S 77 W. 9 lks.
trees Cottonwood N. 30, W 12 lks.

Course.	Distance. Ch.	Lk.	
343			At 25 ch. set L post Br. Cottonwood N 50 W. 9 lks.
			trees Ditto S 83 W 10 lks.

Changed the course to N 11½ W.
At 14 50 set L post Br. Willow S 33 W. 13 lks.
trees Ditto N 68 W. 25 lk-.
At 20 ch changed the course to N. 25½ W.
At 17 50 set L post Br. Cottonwood S 59 W. 27 lks
trees Ditto S 83 W. 24 lks.
At 25 ch changed the course to N. 42½ W.
At 27 ch changed the course N 56½ W.
At 12 ch. changed the course to W.
At 7 ch. closed the S. This line was an open Cottonwood swamp.

The South & East side of this Island is an open Cottonwood swamp—heavy- timbered subject to overflow from 1 to 4 feet. Soil generally good. The north & West side is mostly cain above high water mark, soil very good.

Beginning at the N. W. corner of (# 37 Section 7 should be Section 37 T. 21, R 8 W.) S. 7 W. ran 10½ W.

At 16 ch. set L post Br. H. berry N 56 E. 16 lks.
trees Ditto S 14 E. 18 lks.
At 22 ch. changed the course to S. 28½ W.
At 22 ch set L post Br. Cottonwood S. 59 W. 27 lks.
trees Ash S. 83 W. 24 lks.
Changed the course to S. 48½ W.
At 9 ch. changed the course to S. 38½ W.
At 17 ch changed the course to S 68½ W.
At 5 ch changed the course to S. 57½ E.
At 3 ch. changed the course to N. 82½ E.
At 27 ch changed the course to N. 68½ E.
At 20 ch set L post Br. Cottonwood N 24 E. 4 lks.
trees Ditto N. 88 E. 5 lks.
At 26 ch changed the course to N. 58½ E.
At 21 ch set L post Br. Willows N. 83 W. 34 lks.
trees Ditto N 5 E. 40 lks.

344

Course.	Distance. Ch.	Lk.

At 37 ch closed the S.

The traverse around this S. is mostly open woods, some cain subject to overflow in many places.

Stiff, rich soil.

* * * * * * *

Finis.

T. 22. R 8 W.

1	8	30

October 30.

I, E. H. Nall, Land Commissioner and having in my official keeping as such the records of the "Surveyor General's Office" do hereby certify that the above and foregoing pages are a true and faithful copy and transcript of and from the said record in so far as it is shown and appears of record, in Field note book "[8][B]" of the original surveys now on file and in my official keeping as a part of the record of the State Land Office. The same is a true and correct copy in every line and figure and in strict conformity with the original

Given under my hand and official seal at Jackson, Mississippi, this 13th day of May, A. D. 1902.

[L. S.]

E. H. NALL,
Land Commissioner.

Endorsed: Filed Nov. 24, 1905. W. P. Feild, Clerk.

345 EXHIBIT "B."

Field notes [17] [F.]

Course.	Distance. Ch. Lk.	
1st mile		West Boundary of T. 21 R 8 W. running N.
	40 00	¼ Section post—bearing trees
		Sickamore N 27 E. 94 L.
		Hackberry S 15 W. 32 L.
	80 00	Section post—bearing trees
		Oak N 13 E.
		Elum S 69 E
		Ditto S. 33 W
		Oak N 68 W.
2nd mile		
	30 00	We came to open woods.
	40 00	¼ Section post bearing trees.
		Redbud N 21 E. 74 L.
		Hackberry S 20 W. 12 L.
	80 00	Section post—bearing trees
		Hackberry N 44 E. 4 L.
		Ditto S. 28 E 14 L.
		Ditto S. 29 W. 6 L.
		Ditto N 53 W. 24 L.
3rd mile		
	10 00	left open woods
	40 00	¼ Section post—bearing trees
		Sassafras S 69 E. 20 L X
		Redbud N 28 W 22 L.
	80 00	Section post bearing trees
		Redbud N 33 E 50 L.
		Hackberry S 12 E 40 L.
		Sickamore S 71 W 55 L.
		Hackberry S. 76 W 25 L.
4th mile		
	5 00	Came to open woods
	40 00	¼ Section post—bearing trees
		Hackberry N. 10 E 22 L.
		Ditto S 37 W 12 L.
	60 40	We came to the Mississippi River
		Traverse up the river beginning at the point where the West boundary came to it.

346

Course.	Distance. Ch. Lk.	
St. N.	Course Deg.	Dist. Ch. L.
1	E.	35 00
2	S 84½ E	35 00
3	N. 78½ E.	15 00
4	N. 48½ E.	10 00
5	N 63½ E	45 00
6	N. 43½ E.	15 00
7	N. 58½ E.	35 00
8	N 38½ E	15 00
9	N. 28½ E	20 00 X
10	N — —	60 00
11	N 16½ W	11 00
12	N 31½ W	28 40

1st mile

South Boundary of T. 21 R 8 W. Running E.

31 00 Came to open woods

40 00 ¼ Section post—bearing trees

Persimon N 25 E 16 L.

Ellum S. 45 W. 11 L.

At this place we came to Lake Bolivar.

73 92 Left the Lake.

80 00 Section post bearing trees.

Pawpaw N. 53 E. 33 L.

Box Elder S 61 E 44 L.

Ditto S 64 W 27 L.

Ditto N 84 W. 103 L.

2nd mile

40 00 ¼ Section post—bearing trees—

Ellum S 60 E 3 L.

Ditto N. 30 W 44 L.

57 00 Cross'd an open slew 4 ch. wide.

80 00 A section post—bearing trees.

Oak N. 39 E. 11 L.

Ditto S. 38 E. 56 L.

Gum S 37 W. 37 L.

Ellum N. 14 W. 71 L.

3rd mile

40 00 ¼ Section post—bearing trees

347

Course.	Distance. Ch. Lk.	

Pecan N. 78 E. 40 L.

Persimmon S 26 W. 48 L.

72 00 Came to a Lake

78 00 Left the same.

80 00 Section post—bearing trees.

Ash N 16 E. 15 L.

Hackberry S. 65 E. 29 L.

Persimon S. 39 W. 57 L.

Ditto N 60 W. 15 L.

4th mile

40 00 ¼ Section post—bearing trees.
Ellum N 65 W. 45 L.
Red bud S. 71 E. 17 L.
45 00 Crossed a biough 1 ch wide.
80 00 Section post, bearing trees
Gum N 62 E. 26 L.
Hackberry S. 40 E. 23 L.
Gum S 14 W. 12 L.
Hackberry S 50 W 49 L.

5th mile

25 00 Crossed the strait biough 26 ch. wide X
40 00 ¼ Section post, bearing trees
Pawpa S. 81 E. 3 L.
Red bud N 77 W. 40 L.
69 00 Crossed a biough
80 00 Section post, bearing trees
Oak N. 36 E. 44 L.
Hackberry S. 61 W. 15 L.
Ash S. 86 E. 70 L.
Oak N 31 W. 85 L.

6th mile

40 00 ¼ Section post, bearing trees
Ellum N. 48 E. 33 L.
Box Elder S. 59 E. 9 L.

348

Course.	Distance. Ch. Lk.	
	80 00	T. corner bearing trees
		Hackberry N. 59 E. 21 L.
		Pawpaw S 47 E. 27 L.
		Gum S 21 W. 12 L.
		Oak N. 29 W. 17 L.
1st mile		East Boundary of T. 21, R. 8 W. running N.
	40 00	¼ Section post bear trees
		Hackberry N. 51 W. 22 L.
		Gum S. 8 E. 23 L.
	80 00	Section post. br. trees.
		Gum N. 74 E 91 L.
		Oak S. 15. E 46 L.
		Ellum S. 56 W. 28 L.
		Hackberry N 9 W. 14 L.
2nd mile		
	40 00	¼ S. post br. trees
		Ash S. 22, E. 45 L.
		Ellum N. 38 W. 63 L.
	72 00	Crossed a biough—50 L. wide.

[On the margin, in pencil:] W. B. T. 21, R 7 W.

80 00 S. post br. trees
Hackberry N. 46. E. 17 L.
Pawpaw S. 44 E. 20 L.
Gum S. 27 W. 90 L.
Hackberry N 5 W. 22 L.

3rd mile

23 00 Crossed a biough 25 L. wide
27 00 X a biough—50 L. wide
40 00 ¼ Section post—br. trees
Oak N. 44. E 42 L.
Hackberry S 3 W. 22 L.
52 00 X a biough—½ ch. wide
80 00 S. post br. trees
Sickamore N. 7. E. 42 L.
Haw S. 75 E. 18 L.
Gum S 26 W 19 L
Ditto N. 59 W 12 L.
X

4th mile

20 00 X a biough—25 L. wide
40 00 ¼ Section post—br. trees
Box Elder S. 32. E. 23 L.
Oak S 80 W. 8 L.

349

Course.	Distance. Ch.	Lk.	
	80	00	S. post. br. trees
			Oak N. 45 E. 31 L.
			Gum S 84 E 25 L.
Quit			Hackberry S. 22 W. 23 L.
			Ditto N 69 W 16. L.

5th mile

40 00 ¼ S. post br. trees
Hackberry S. 51 W. 71 L.
Ash N 50 E 56 L.
79 00 X the Sunflower—biough 1 ch. wide
80 00 S. post br. trees
Hackberry N. 62 E. 63 L.
Ash S 83 E. 66 L.
Hackberry S 14 W. 95 L
Percon N 37 W 59 L

6th mile

40 00 ¼ S. post—br. trees.
Cypress S 32 E. 20 L.
Persimon N. 62 W 22 L.
41 00 X a biough 1 ch. wide
49 00 X a biough—1 ch. wide
80 00 T—corner b. trees
Oak N 55 E 26 L.
Hackberry S. 22. E 40 L.
Ellum S 63 W 50 L
X Hackberry N 16 W 21 L.

Running W.

1st mile — North Boundary of T. 21 R 8 W.

1 00 Came to an open slew
10 00 left the same
40 00 ¼ S. post br. trees
Persimon S 87 E 10 L
Hackberry N 9 E 15 L.
78 25 X a line
80 00 S. post br. trees
Ash N. 29 E 51 L
Hackberry S. 63 E 48 L
Ditto S 61 W 51 L
Ditto N 78 W 58 L

350

Course.	Distance. Ch.	Lk.	
2nd mile			
	40	00	¼ S. post—br. trees
			Hackberry N 17 E 13 L.
			Ditto S 62 W 5 L
	67	00	X the Sunflower biough 1 ch. wide
	80	00	S. post br. trees
			Gum N 40 E 35 L
			Ditto S 67 E. 36 L.
			Ditto S 47 W. 46 L.
			Ellum N 62 W 100 L.
			X
3rd mile			
	40	00	¼ S. post br trees.
			Oak N 44 E 13 L
			Percon S 77 W 65 L
	80	00	S. post br trees
			Hackberry N 31 E.
			Ditto S 35 E.
			Cypress S 61 W.
			Hackberry N 34 W.
4th mile			
	40	09	¼ S. post br. trees
			Sickmore S. 50 W. 4 L.
			Ditto N. 80 W 28 L.
	65	96	Cume to the west Boundary 52 L. S. E from the corner in which place set up a post br. trees.
			Hackberry S. 38 E. 27 L.
			Ditto N 83 E. 21 L.
			X
			W. Boundary of Section 1.
S. 31½ E	6	32	Lot post br trees—Box Elder N. 93 E. 16 L
			Persimon S 25 W. 21 L
	12	64	Lot post br. trees Hackberry N 29 E. 5 L
			Gum S. 30 E. 11 L.

18 96 Lot post br trees Box Elder S 88 W 21 L
Ditto S 30 E. 39 L
25 28 Lot post—br. trees Hackberry N 4 E 62 L
Ditto S 33 E. 54 L.
28 40 changed the course
S 16¼ E 3 20 Lot post—br trees Cypress N 40 E 4 L
Ditto S 60 W 37 L
9 52 Lot post br. trees Hackberry N. 21 W 41 L
Ellum S 26 E 91 L.

351

Course.	Distance. Ch. Lk.	
	11 00	Change the course
S.	4 84	Lot post br trees Box Elder N 28 E 19 L.
		Ellum S 8 W. 12 L.
	11 16	Section post br trees Gum N 28 E 19 L
		Ellum S 8 W. 12 L.
		South Boundary of Section 1.
S. 74 E	40 00	Came to an open slew.
	49 00	left the same
	60 00	Came to an open slew
	64 00	left the same
	95 00	Came to an open slew.
	102 00	left the same
	126 40	S. post—bear—trees Persimon N 28 W 50 L.
		Hackberry S 20 W. 28 L
		X East Boundary of Section 1.
N 9 W	10 22	Lot post—br trees Oak N 76 W. 100 L.
		Ash S. 21 W. 17 L
	20 44	Lot post br trees Maple S 45 W. 24 L.
		Persimon N 12 W. 113 L
	30 66	Lot post br trees Percon N 45 W. 35 L
		Oak S. 44 W 74 L.
	40 88	Lot post br. trees Box Elder N 12 W 13 L
		Hackberry S 61 W 2 L
	51 10	Lot post—br trees Gum N 55 W 87 L.
		Oak S. 16 W 72 L.
	61 32	Lot post br trees Gum N. 10. W. 82 L.
		Hackbry S 74 W. 13 L.
	71 54	Lot post br trees Hackberry N. 17 W. 40 L.
		Oak S. 25. W. 25 L.
	82 20	Came to the North Boundary.
X		West Boundary of Section 2.
South	6 32	Lot post br. Tree Gum. N. 80. E. 17 L.
		Ditto S. 18. W. 24 L.
	12 64	Lot post br. Tree Sickamore S. 50 E 30 L.
		Ditto N. 70 E. 12 L.
	18 96	Lot post br. tree Ash N. 47 E 5 L.
		Mulberry N. 20. W. 23 L.
	25 28	Lot post Hackberry N. 18. E 17. L.
		Ditto S 11 W 50. L.

352

Course.	Distance. Ch.	Lk.	
	31	60	Lot post br. trees Gum. N. 12. W. 11 L. Ditto S. 13. W. 50 L.
	37	92	Lot post br trees Cottonwood N. 78. E. 11. L. Ditto S 42 E 10. L.
	44	24	Lot post br. trees Sickamore S. 75 E. 10 L. Hackberry N. 85 E 77. L
	49	84	Changed the course.
S 28½ W.	1	72	Section post Sickamore N. 2 W. 100 L. Gum. S. 40 W. 25 L. South Boundary of S. 2.
S. 59 E.	65	00	X a dry biough.
	126	40	S. post—br. trees Ash. N. 12. W. 6. L. Ditto S 59. W. 5 L. East Boundary of S. 2.
S. 10 W	10	22	Lot post br. trees Ash. N. 81. E. 26 L. Ditto N. 88 W. 40 L.
	20	44	Lot post br. trees Ash N. 11 W. 12 L. Ellum S 64 W. 6 L.
	30	66	Lot post br trees Ash N. 21 E 25 L. Hackberry S. 12 W. 37 L.
	36	66	X a biough
	40	88	Lot post—br. trees Oak N. 42 W. 6 L. Ditto S. 53 W. 14 L.
	51	10	L. post—br trees Persimon N. 64 E. 8 L. Boxelder. S. 63 W. 20 L.
	61	32	Lot post br trees Mulberry N. 13 W. 11 L. Ditto S 13 W. 13 L.
	67	32	X a biough
X	71	54	Lot post—br trees Oak N. 33 W. 22 L. Hackberry S 46 W. 25 L.
	81	84	Closed the section
S 28½ W.			West Boundary of S. 3.
	6	32	Lot post br trees Ellum N. 15. E 40 L. Gum S. 39 W. 25 L.
	12	64	Boxelder N. 21 E 26 L. Persimon S 36 W. 14 L
	18	28	Changed the course
S 38½ W.		68	Lot post br trees Percon N. 21 E 12 L. Persimon S 36 W. 14 L.
	7	00	Lot post br trees Mulberry N. 15 E. 24 L. Hackberry S 40 E 12 L.

353

Course.	Distance. Ch.	Lk.	
	13	32	Lot post br trees Box elder. N. 88 E 55. L. Hackberry S. 35 E 14 L.
	15	00	Changed the course.

S. 58½ W 4 64 Lot post—br. trees Mulberry N. 38. E 39 L.
Hackberry S 80 W 91 L.
10 96 Lot post br trees Ash S 88 E 68 L.
Ellum S 80 W 70 L.
16 87 S post br trees Hackberry N. 55 E 19 L.
Ellum S 68 W 45 L
S 40 W East boundary of S. E.
10 22 Lot post br trees Ellum N. 20. E. 22 L
Ash N 53 W. 15 L.
20 44 Lot post br trees Ellum N. 13 W. 28 L.
Hackberry N. 73 W. 28 L.
30 63 Lot post br trees Gum N. 12 W. 4 L.
Ditto S 50 W 56 L.
40 88 Lot post br trees Sickamore N. 30 E 23 L.
X
Gum S 53 W 11 L.
51 10 Lot post br trees Cottonwood N 17 E 22 L.
Hackberry S 80 W. 20 L.
61 32 Lot post br. trees Mulberry N 13 E 8 L.
Gum S 74 W 9 L.
64 32 X a dry biough.
71 54 Lot post br trees. Boxelder N. 17 W. 8
Gum N. 74 W 12
81 76 S. post—br trees Mulberry N. 2 E 36 L.
Hackberry S 60 W 31 L.
South boundary of S. 3.
N. 44 W 5 00 came to an open slough.
17 00 left the same.
33 00 came to an open slew.
41 00 left the same
62 00 came to an open slew.
65 00 left the same:
X
127 16 Closed the section
North Boundary of Section 4.
S 58½ W 6 73 Lot post—br trees Cypress N. 88. E. 6 L.
Ditto S 33 W 62 L.
13 05 Lot post br trees Persimon N 73 E 12 L.
Boxelder S 40 W 85 L.
18 13 changed the course
S 43½ W 1 24 Lot post br trees Hackberry N. 2 E 30. L.
Gum S 44 W 50 L.
7 56 Lot post br trees Hackberry N 4 E 12 L.
Ditto S 56 W 32 L.

354

Course.	Distance. Ch. Lk.	
	13 88	Lot post—br trees Hackberry N 81. E 12. L. Redbud S 56 W 32 L.
	15 12	Changed the course.

S 63½ W.	5 20	Lot post br trees Hackberry N. 10 E 22 L. Ellum S 28 W 41 L.
	11 52	Lot post br trees Gum N. 82 E 75 L. Hackberry S. 3 E 15 L.
	17 84	S post br trees Sickamore N 13 E 6 L. Ditto S 36 W 22 L.
		West boundary of S. 4.
S 29 E	61 00	X a dry biough 1 ch. wide.
	126 40	S post—br trees Locus N. 77. E. 65 L. Ash S 74 W. 78 L.
		South boundary of S. 4.
S 55 W	10 22	Lot post br trees Gum N. 8. W. 17 L. Hackberry N. 65 W 30 L.
	20 44	Lot post br trees Hackberry N. 43 E. 37 L. Ash S. 77 W. 28 L.
	30 66	Lot post br trees Persimon N. 35 W. 28 L. Gum N. 68 W. 73 L.
	40 88	Lot post br trees Gum N. 54. E 27 L. Hackberry N. 52 W 5 L.
	51 10	Lot post br trees Hackberry N 4 E 11 L. Ditto N 54 W 23 L.
	61 32	Lot post br trees Gum N 28 E 10 L. Percon S 53 W 84 L.
	71 54	Lot post br trees Redbud N 29 W 22 L. Sasafras S 82 W 5 L.
	82 57	Closed the Section. North Boundary of S. 5.
S 63½ W	6 32	Lot post br. trees Cottonwood N. 63 E. 46 L. Ditto S 30. W 41 L.
	12 64	Lot post br. trees Gum N 40 E 28 L. Redbud S 75 W 6 L.
	18 96	Lot post br. trees Persimon S 80 E 24 L. Hackberry S 63 W 8 L
	25 28	Lot post br trees Cottonwood N. 24 E 19 L. Boxelder S 80 W 24 L.
	27 16	Changed the course.
S 48½ W	4 44	Lot post—br trees Boxelder N 64 E 25 L.
	10 00	Changed the course Redbud S 13 E 11 L.
	00 76	Lot post br. trees Sickamore N 84 E 25 L. Hackberry S 57 W 4 L.
	7 76	Lot post br trees Dogwood N 8 E 65 L. Boxelder N 66 W 39 L.
	15 00	Changed the course.

355

Course.	Distance. Ch. Lk.	
N 84½ W	11 76	S. post br trees Hackberry N 41 E 13 L. Gum S 73 W 3 L.
		West boundary of S. 5.
S 6 E	24 40	Came to lake Bolivar and set section post br trees Pecan S 29 E 12 L. Boxelder S 28 W 31 L.
		South boundary of section 5.

S 66 W	2	00	X an open slew 2 ch. wide X
	10	22	Lot post br trees Gum N. 10 W. 2 L. Oak S 30 W 16 L.
	15	00	X an open slew 2 ch. wide
	20	44	Lot post br trees Redbud N 68 E 13 L. Gum S 80 W 8 L.
	30	66	Lot post br trees Locus N 40 E— Gum N 88 W—
	40	88	Lot post br trees Redbud N 48 E 5 L. ditto N 81 W 20 L.
X	51	10	Lot post br trees Locus N 48 E 95 L. ditto S 28 W 25 L.
	61	32	Lot post br trees Box elder N. 48. E. 52 L. Pawpaw N 88 W 59 L.
	62	92	Changed the course
N 7½ W	3	90	Changed the course
N 26½ W	15	00	Changed the course
N 17½ W	30	00	Changed the course
N 35½ W	17	50	Lot post—br trees Box elder N 88 E 18 L. Ditto N 38 W 41 L.
	35	00	Changed the course.
N 52½ W	28	30	Closed the section
N 84½ W			North boundary of S. 8.
	23	24	Changed the course.
W " "	35	00	Came to the West boundary of the T. at the point where it came to the Miss. River. South boundary of S. 6.
N 52½ W	7	00	Changed the course
N 62½ W	19	00	Changed the course
N 77½ W	25	00	Changed the course
W " "	13	76	Came to the West Boundary 8 ch south of the N. W. Corner.
			Section Lines.
			First grade line.
			Beginning at the South boundary and running north between S• 10 and 11

356

Course.	Distance. Ch.	Lk.	
	11	20	Came to lake Bolivar and set post. br trees Sickamore S 26 E 13 L. Gum N 37 W 34 L.
	56	00	Set a post and left the lake br trees Ash N. 22 E. 11 L. Locus S 18 W 6 L.
	76	00	Enter cain.
	80	00	S post br trees Box elder N. 13 E 32 L. Ditto S 47 E 4 L. Sasafras S 27 W 8 L. Gum N 28 W 58 L.
			2nd mile 9 & 12.

7 00 Enter open woods.
40 00 ¼ S. post br trees Locus S 58 E 19 L.
Hackberry N 47 W 14 L.
80 00 S post br trees Hackberry N 15 W 8 L.
Ditto S 7 E 16 L.
Ellum S 53 W 11 L.
Hackberry N 88 W 24 L.
3rd mile between S 8 & 13.
3 00 Left open woods.
25 00 Enter open woods.
40 00 ¼ S. post br trees Hackberry N 66 W 13 L.
Oak S 24 E 38 L.
61 32 Came to lake Bolivar and set a post. br trees
Persimon N. 63 W 23 L.
Ellum S 6 E 41 L.
Second guide line beginning on the south Boundary and running north.
1st mile between S° 11 & 17
11 00 Enter open woods.
39 00 Enter cain.
40 00 ¼ S. post br trees Hackberry N. 84 E. 12 L.
Ash S 28 W 5 L.
60 00 Enter open woods.
80 00 S post br trees Cypress N 4 E 4.50 L.
Ellum S 5 E 4.50 L.
Locus S 8 W 5.00 L.
Persimon N 6 W 5.00 L.
2nd mile between S° 16 & 12
21 00 Enter cain.
40 00 ¼ section post br trees Ellum N. 12 39 L.
Pawpaw S 88 W 30 L.

357

Course.	Distance. Ch. Lk.	
	80 00	S post—br trees Redbud N. 75 E 62. L.
		Gum X S 18 E 22 L.
		Ditto S 66 W 69 L.
		Mulberry N 2 W 78 L.
		3rd mile between S° 13 & 15.
	39 89	came to the back line of S. 5, 2 ch & 25 L.
		N. E. from Lot post No. 2.
		Third guide line beginning on the South Boundary and running north.
		1st mile between S° 17 & 18.
	1 00	enter a lake.
	9 00	Left the same and enter cain.
X		
	40 00	¼ S. post br. trees Oak. S 39 E 8 L.
		Ditto S 88 W 22 L.

(Duplicate)

55 00 X a biough—1 ch wide.
80 00 S. post—br trees Oak. N 70 E 40 L.
Ellum S. 24 E 25 L.
Gum S. 30 W. 44 L.
Boxelder N 28 W 68 L.
Second mile between S^{s} 16 & 19.
23 00 enter open slew.
40 00 ¼ S. post br trees Hackberry N. 34 W 34 L.
Mulberry S 19 W 15 L.
41 00 enter cain.
80 00 S post br. trees Oak N. 69 E 70 L.
Hackberry S 61 E 53 L.
Oak S 72 W 27 L.
Ditto N 64 W 24 L.
3rd mile between S^{s} 15 & 20.
16 00 X a biough 1 ch wide.
40 00 ¼ S. post br. trees Ellum S 82 E 22 L.
Boxelder S 19 W 70 L.
65 00 Enter an open slew.
75 00 Left the same and enter cain.
80 00 S post br trees Hackberry N 53 E 31 L.
Ellum S 80 E 23 L.
Ditto S 19 W 10 L.
Ditto N 28 W 24 L.
4th mile between S^{s} 14 & 21. &
11 05 Came to the back line of S 4 4 ch & 14 L.
N. E. from Lot post No. 1.
4th guide line beginning on the South Boundary and running north

Course.	Distance. Ch.	Lk.	
358			1st mile between S^{s} 18 & 29.
	28	00	X a biough25 L wide
	40	00	¼ S. post br trees Dogwood N. 13. E. 7 L.
			Ditto N 72 W 6 L.
	61	00	X a biough 2 ch wide.
	80	00	S post br trees Redbud N. 65 E 41 L.
			Gum S 49 E 60 L.
			Ditto S 16 W 25 L.
			Ditto N 24 W 34 L.
			2nd mile between S^{s} 19 & 28.
	40	00	¼ S. post br trees Dogwood N. 42 E 26 L.
			Ditto S 43 W 16 L.
	72	00	X a biough 25 L. wide.
	80	00	S. post—br. trees Oak N. 3 E 9. L.
			Ditto S 73 E 17 L.
			Boxelder S 50 W 13 L.
			Hackberry N 45 W 19 L.
			3rd mile between S^{s}: 20 & 27.
	13	50	X a biough 25 Ls. wide.

35 00 enter an open slew.
40 00 ¼ S. post br trees Oak S 33 E 7 L.
Locus N 87 W 3 L.
46 00 enter cain.
80 00 S post br trees Gum. N. 16. E 23 L.
Ditto S 27 E 22 L.
Ditto S. 76 W 13 L.
Ditto N. 13 W 49 L.
4th mile between S^{s} 21 & 26.
40 00 ¼ S post br trees Cottonwood S 39 E 21 L.
Sickamore S 80 W 31 L.
80 00 S post br trees Oak N. 88 E 32 L.
Ditto S 48 E 40 L.
Ellum S 79 W 20 L.
Maple N 69 W 38 L.
5th mile between S^{s} 22 & 25.
18 00 X an open slew 2 chs wide.
39 00 enter an open slew.
40 00 ¼ S post—br. trees Hackberry S. 73 E 22 L.
Ditto S 27 W 17 L.
46 00 Enter cain
75 00 Enter an open slew.
80 00 S post—br trees Hackberry N. 8 E 31 L.
Ditto S 64 E 3 L.
Ditto S 27 W 6 L.
Ditto N 56 W 14 L.

359

Course.	Distance. Ch. Lk.	
		6th mile between S^{s}. 23 & 24.
	20 00	enter open slew.
	23 00	enter cain
	40 00	¼ S post br. trees Redbud N. 17 E. 11 L. Sasafras N. 3 W 31 L.
	80 00	came to the North boundary of 10 L. E. of the 2nd mile post from the N. E corner. 5th Guide Line beginning on the South Boundary and running north. 1st mile between S^{s} 29 & 30.
	40 00	¼ S. post br trees Pawpaw N. 80 E 3 L. Ditto S 8 W 16 L.
	80 00	S. post br trees Boxelder N. 69 E 27 L. Ditto S 54 E 8 L. Hackberry S 66 W 24 L. Boxelder N 22 W 31 L. 2nd mile between S^{s} 28 & 31.
	9 00	X a biough 50 L. wide.
	26 00	X a biough 2 ch wide.
	40 00	¼ S post br trees Ash N. 7 E. 78 L. Boxelder S 60 W. 46 L.
	76 00	X biough—50 L wide

80 00 S post—br trees Oak N. 63 E 4 L.
Ditto S 74 E. 53 L.
Hackberry S 24 W 39 L.
Ash N 10 W 28 L.
3rd mile between S^{s} 27 & 32.
39 43 ¼ section post br trees Redbud N. 17 W 16 L.
Hackberry N 43 E 9 L.
79 43 S post br trees cottonwood N. 5 E 105 L.
Gum S 25 E 27 L.
Ditto N 85 W 37 L.
Ditto N 75 W 76 L.
4th mile between S^{s} 26 & 33.
40 36 ¼ S post br trees Ellum S. 76 E 8 L.
Gum S 80 W 32 L.
52 00 enter open slew.
62 00 left the same and enter cain.

360

Course. Distance. Ch. Lk.

80 36 S post br trees X Hackberry N 7 E 32 L.
Ellum S 38 E 52 L.
Gum S 51 W 65 L.
Mulberry S 66 W 42 L.
5th mile between S^{s} 25 & 34
18 00 X an open slew 2 ch wide
40 00 ¼ S post br trees Ellum N. 17 E 65
Redbud S 28 W 46
60 00 enter open slew.
64 00 left the same.
67 00 X a biough 50 L. wide
80 00 S post br trees Hackberry N. 8 E 31 L.
Ellum S 64 E 3 L.
Persimon S 27 W 3 L.
Oak N 56 W 14 L.
6th mile between S^{s} 24 & 35.
4 00 enter an open slew.
13 00 Left the same
40 00 ¼ S. post br trees Ellum S 33 E 15 L.
Oak S 16 W 21 L.
63 00 X the Sunflower biough
80 00 Came to the north boundary of the T at the 1st mile post from the N. E. Corner.
First parallel line beginning on the East boundary and running west.
1st mile between S. 30 & 31.
40 00 ¼ S post br trees Persimon N. 88 E 33 L.
Ash S 12 W 17 L.
58 00 X a biough 25 L wide
80 17 came to the first guide line 57 L south of the post
17 00 cross a biough 25 L. wide

20 00 X a open slew 2 ch. wide
40 00 ¼ Section post br trees Ash N. 78 E 50 L
Gum S 50 W 31 L.
62 00 cross an open slew 2 ch wide
80 00 came to the 2nd guide line 6 L. North of the post.

361

Course.	Distance. Ch.	Lk.	
			3rd mile between Ss 18 & 19.
	8	00	X cross an open slew 2 chs wide
	28	00	X the Strait biough 1 ch wide.
	40	00	¼ S post br trees Hackberry N. 52 W. 8 L. Ellum S 7 W 6 L.
	68	00	X an open slew 2 ch wide
	79	95	came to the 3 guide line 15 L. north of the post.
			4th mile between S°. 16 & 17.
	40	00	¼ section post br trees Hackberry N 36 W 9 L Ditto S 22 W 32 L.
	42	00	enter open woods
	80	50	came to the 4th guide line 17 L north of the post
			5th mile between S° 11 & 12.
	20	00	enter cain.
	40	00	¼ S post br trees Sickamore N 73 E 100 L. Gum S 69 W 73 L.
	45	00	Came to lake Bolivar and sit a post..
			br trees Oak S 8 E 61 L.
			Ditto N 43 W 20 L.
	69	00	set a post and left the lake.
			Br. trees Locus N 62 E 4 L.
			Persimon S 19 W. 5 L.
	80	00	came to the 5th guide line at the post
			6th mile between S° 9 & 10.
	40	00	¼ S post br trees Hackberry N. 25 E 6 L. Ditto S 45 W 9 L.
	42	00	enter cain.
	79	60	came to the west boundary 9 L. South of the post.
			Second parallel beginning on the east boundary and running west
			1st mile between S 31 & 32
	40	00	¼ S post br trees Box elder N 44 E 11 L. Hackberry S 89 W 53 L.
	61	00	X a biough 25 L. wide
	80	00	came to the first guide line at the post.

362

Course.	Distance. Ch.	Lk.	
			2nd mile between S° 27 & 28
	28	00	X a biough—50 L. wide

40 00 ¼ S post br trees Hackberry N 40 E 7 L.
Oak N 8 W 6 L.
63 00 X a biough 22 L. wide.
80 00 came to the 2nd guide line at the post 3rd mile between S° 19 & 20.
25 00 X a biough 25 L. wide.
40 00 ¼ section post br trees Boxelder S 35 E 3 L.
gum N 12 E 39 L
47 00 X a biough 50 L wide
71 00 X the strait biough 1 ch. wide.
80 00 came to the 3rd guide line at the post 4th mile between S° 15 & 16.
30 00 enter open woods
40 00 ¼ S post—br trees Ash N 61 E 54 L.
Locus S 58 W 36 L.
44 00 left open woods & enter cain.
55 00 left the same.
80 00 came to the 4th guide line at the post, 5th mile between S° 12 & 13.
38 00 came to Lake Bolivar and set up a post—br. trees Sickamore N 32 E 27 L.
Ditto S 58 W 37 L.
58 00 Set up a post and left the lake br trees Oak N. 70 E 11 L.
Persimon S 6 W 53 L.
80 00 came to the 5th guide line at the post 6th mile between S° 8 & 9.
3 00 X a biough 1 ch wide
8 00 left open woods and enter cain.
36 00 enter open woods.
40 00 ¼ section post br trees Hackberry S 80 E 11 L
Ditto N 48 W 15 L
45 00 left open woods

363

Course.	Distance. Ch. Lk.	
	55 00	X a biough 1 ch wide
	62 00	enter open woods.
	79 88	Came to the West boundary 98 L. South of the post.
		Third parallel beginning on the East boundary and running West.
		1st mile between S° 32 & 33.
	32 00	enter an open slew.
	39 00	left the same.
	40 08	¼ S post br trees
		Gum N. 32 E 5 L.
		Ditto S 21 W 8 L.
	80 06	Came to the 1st guide line at the post.
		2nd mile between S° 26 & 27.
	32 00	enter an open slew.

38 08 left the same.
40 00 ¼ S post br trees
Ash N 8 E 24 L.
Ditto S 66 E 17 L.
80 00 Came to the 2nd guide line at the post
3rd mile between S^{s} 20 & 21.
40 00 ¼ S post br trees
Sasafras N. 23 E 20 L.
Ditto S 40 W 61 L.
62 50 Cross a dry biough.
71 00 X a open slew.
80 00 Came to the 3rd guide line 20 L South of the post.
4th mile between S^{s} 14 & 15.
15 85 came to the back line of S 4, 4 ch 91 L. S. W. from Lot post No. 2.
5th mile. O.
6th mile between S^{s} 7 & 8.
15 00 Set post and left the lake. br trees
Ellum N. 16 E 4 L.
Locus S 17 W 33 L.
35 00 Left open woods
40 00 ¼ S post br trees
Ellum N 41 E 4 L.
Redbud S 50 W 4 L.

364

Course.	Distance. Ch.	Lk.	
	80	00	came to the West boundary at the post.
			4th Parallel beginning on the East boundary and running West.
			1st mile between S^{s} 33 & 34.
	40	00	¼ S. post br. trees Mulberry S 67 E 22 L
			Boxelder N 14 E 25 L.
	80	30	came to the 1st guide line 70 L. North of the post.
			2nd mile between S^{s} 25 & 26.
	13	00	Enter an open slew.
	31	00	left the same
	40	00	¼ S post br trees Hackberry S 73 E 19 L
			Gum N 56 W 43 L.
	80	00	came to the 2nd guide line at the post
			3rd mile between S^{s} 21 & 22.
	21	48	came to the back line of S 2 1 ch
			48 L. N. E. from the corner.
			5th parallel beginning on the East Boundary and running West.
			1st mile between S^{s} 34 & 35.
		00	X the Sunflower biough 1 ch wide
	24	00	X the same
3	35	00	X it again.

40 10 ¼ S post br trees Oak N 38 E 31 L.
Hackberry S 28 E 25 L.
80 00 Came to the 1st guide line at the post.
2nd mile between S^{n} 24 & 25.
40 00 ¼ S post br. trees Hackberry S 9 E 13 L
Persimon N 23 21 L
76 00 enter an open slew.
80 10 came to the 2nd guide line at the post.
3rd mile between S^{n} 22 & 23.
2 00 left open slew & enter cain.
7 36 came to the back line of S 1.
1 ch .08 L N. W. from the corner.

365

St.	Course.	Distance. Ch.	Lk.
		Traverse of Lake Bolivar East side—Section 13.	
1	S 7½ E	21	70
		Section 12.	
1	S 7½ E	13	00
2	S 3½ W	32	00
3	S 13½ W	36	17
		Section 11.	
1	S 13½ W	17	00
2	S 23½ W	14	00
3	S 33½ W	29	00
4	S 28½ W	17	37
		Section 10.	
1	S 28½ W	12	74
		West side of the Lake—Section 10.	
1	N 25½ E	25	70
2	N. 48½ E	20	00
3	N 35½ E	24	00
		Section 11.	
1	N. 24½ E	26	38
		Section 12.	
1	N 15½ E	28	00
2	N 7½ E	27	00
3	N " "	26	25
		Section 10.	
1	N 17½ W	28	00
2	N 21½ W	37	00
		Section 8.	
1	N 52½ W	11	59
2	N 26½ W	13	00
		Section 7.	
1	N 36½ W	18	00
2	N 61½ W	28	00
3	N. 83½ W	30	00

Recorded April 9th 1830.
T 21. R. 8 W. Choctaw District
Surveyed by Benj Griffin D. S. in January & February 1830.

366 I, E. H. Nall, Land Commissioner and having in my official keeping as such the records of the "Surveyor General's Office" do hereby certify that the foregoing pages are a true and faithful copy and transcript of and from the said record in so far as it is shown in Field Note Book $\left[\frac{17}{F}\right]$ of the original survey now on file and in my official keeping as a part of the Record of the State Land Office. The same is a true and correct copy in every line and figure and in strict conformity with the original.

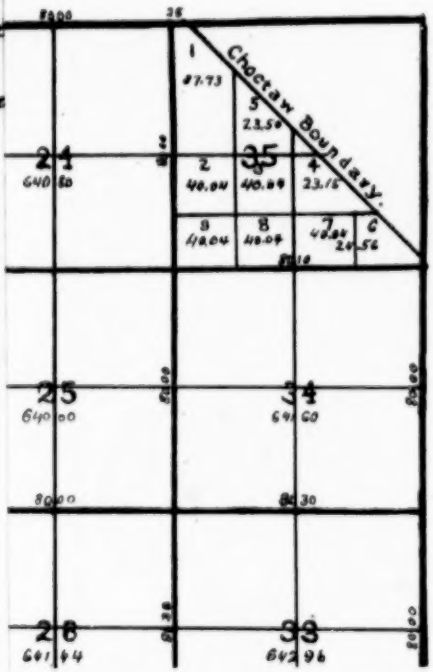
Given under my hand and official seal at Jackson, Mississippi this 13th day of May, A. D. 1902.

[SEAL.] (Signed) E. N. NALL,
Land Commissioner.

(Here follows map marked page 367.)

FOLD OUT IS TOO LARGE TO BE FILMED

No. 2
Moo
v.
McQu



368 NOTE.—T. 22 R. 8 W. is recorded in Book containing maps of the Choctaw Cession of 1830.

The whole of this Township was surveyed by Benjamine Griffin, Deputy Surveyor in January and February, 1830.

Surveyors' Office, Washington, Miss. May 31st, 1830.

Examined and approved.

(Signed) JOE DUNBAR,
Surveyor South of Tennessee.

I, E. H. Nall, Land Commissioner and having in my official keeping as such the records of the surveyor Generals Office do hereby certify that the above and foregoing map is a true and faithful tracing and copy of and from the original now on file and in my official keeping as a part of the said record, the same is a true and correct copy of every line and figure and in strict conformity with the original.

Given under my hand and official seal at Jackson, Mississippi this 13th day of May, A. D. 1902.

[SEAL] (Signed) E. H. NALL,
Land Commissioner.

EXHIBIT "D."

Record of State Lands, Bolivar County, Mississippi.

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, Geo. P. Melcher, sheriff and tax collector in and for said County do hereby certify that the following is a correct list of lands sold to the State of Mississippi on the 1st Monday—the 6th day of March, 1882, for delinquent taxes due thereon for the fiscal year 1881 pursuant to the requirements of law.

To whom assessed.	When sold to State.			Description of land.	Sec.	Tp.	Range.	E. or W.	No. of acres.	Printer's fee.	State tax.	County tax.	Sheriff's fees.		
	Day.	Month.	Year.							$ Cts.	$ Cts.	$ Cts.	$ Cts.		
Unknown. ..	6	M'ch	1882	*	*	*	*	*	*	*	*	*	*		
"	"	"	"	All	36	21	8	W.	824	20	12 36	74 16	1 00	Island No. 76	28 Sept. 1891 J. T. Currie & M. G. Hall
"	"	"	"	All fract'l.	37	21	8	"	185	20	2 88	17 28	1 00	Island No. 76	26 Oct. 1891 " " " " " " "

GEO. P. MELCHER, *Sh'ff, &c.*

Recorded and handed sheriff April —, 1883.

I, E. H. Nall, Land Commissioner, and having in my official keeping as such the records of the State Land Office, do hereby certify that the above and foregoing writing and drawing is a true and correct copy of and from the record book in my custody styled and labeled "State Levee Lands" "Auditor's office" Desoto, "Bolivar," "Coahoma" "Issaquas" "No. 1" and on page 37 of the said book

Given under my hand and official seal at Jackson, Mississippi this the 13th day of May, 1902.

E. N. NALL, *Land Commissioner.*

Endorsed: Filed Nov. 24, 1905. W. P. Feild, clerk.

Record of State Lands, Bolivar County, Mississippi, — 49.

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, Geo. P. Melcher, sheriff & tax collector in and for said County do hereby certify that the following is a correct list of lands sold to the State of Mississippi on the 1st Monday the 5th day March 1894, for delinquent taxes due thereon for the fiscal year 1893, pursuant to the requirements of law.

To whom assessed.	When sold to State.			Description of land.	Section.	Township.	Range.	E. or W.	No. of acres.	Printer's fee.	State tax.	County tax.	Sheriff's fees.	Clerk's fees.	Levee tax.	When redeemed or purchased from State.			Name of purchaser.
	Day.	Mo.	Year.													Day.	Mo.	Year.	
										$ Cts.	$ Cts.	$ Cts.	$ Cts.	$ Cts.					
	5	Mch.	1894	* *	*	*	*	W.	*	*	*	*	*	*	*	*	*	*	*
Curry & Hall.....	"	"	"	All (outside levee)...	36	21	8	"	824	20	2 06	7 00	25	10					
Curry & Hall.....	"	"	"	All (" ")...	37	21	8	"	185	20	46	1 56	25	10					
* *	*	*	*	* *	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

GEO. P. MELCHER,
Sheriff & Tax Collector, Bolivar County.

Recorded and returned to clerk May 5, 1894.
W. W. STONE, *Auditor.*

I, E. H. Nall, Land Commissioner and having in my official keeping as such the records of the State Land Office do hereby certify that the above and foregoing writing and drawing is a true and correct copy of and from the record book in my custody styled and labeled "State & Levee Lands" "Auditor's office" "De Soto," "Bolivar" "Coahoma" "Issaquena" "No. 1" and on page 49 of the said book.

Given under my hand and official seal at Jackson, Mississippi this 13th day of May A. D. 1902.
[L. S.]

E. H. NALL, *Land Commissioner.*

Endorsed: Filed Nov. 24, 1905. W. P. Feild, clerk.

Bolivar.

Forfeited Lands Remaining in the Auditor's Office Passed the Date of Redemption and Transferred to the State Land Office.

To whom assessed.	When sold to State.			Description of land.	Sec.	Township.	Range.	E. or W.	No. of acres.	Assessed value.	State tax.	County tax.	Yazoo, Miss., valley tax.	Miss. levee tax.
	Day.	Mo.	Year.							$ Cts.	$ Cts.	$ Cts.	$ Cts.	$ Cts.
	5	M'ch	1894	* * * *	*	*	*	W	*	*	*	*	*	*
				All (outside levee)	36	21	8	"	824	.....	6 18	21 00		
				All (" ")	37	21	8	"	185	.....	1 38	4 68		
				* * * *	*	*	*	*	*	*	*	*	*	*

AUDITOR'S OFFICE, STATE OF MISSISSIPPI.

To the State Land Commission:

I, W. D. Holder, Auditor of Public Accounts, do hereby certify that the above and foregoing is a true and correct list of lands in — county, on which the time allowed for redemption has expired.

Given under my hand and seal of office, at Jackson, Miss., this 15th day of April, A. D. 1896.

[L. S.]

W. D. HOLDER, *Auditor.*

Rec'd Apr. 15/96.
JNO. M. SIMONTON, *L. C.*

I, E. H. Nall, Land Commissioner, do hereby certify that this sheet is a true copy of and from the original certified list filed in the State Land office, and now in my custody in so far as the same relates to the tracts or parcels of land therein described.

Given under my hand and official seal at Jackson, Mississippi this 13th day of May 1902.

[L. S.]

E. H. NALL,
Land Commissioner.

Endorsed: Filed Nov. 24, 1905. W. P. Feild, clerk.

EXHIBIT G.

Bolivar County, Township —, Range —.

Patentee and Date of Sale —.

Description of tract.				Contents.		Rate per acre.	Amount.	Date of sale.	No. of patent.	To whom patented.	Date of patent.	Remarks.
Part of section.	S.	T.	R.	Acres.	100ths.							
All (outside of levee) from page 32	36	21	8 W.	824								
Lot 4 & N ½ Lot 5	36	21	8 W.	129	75	25	32 44	Aug. 10, 1899	6950	Elizabeth S. Woods.	Aug. 10, 1899	
Lot 6 & S ½ Lot 5	36	21	8 W.	127	05	25	31 76	Aug. 10, 1899	6951	Malvina May Scott.	Aug. 10, 1899	
Lot 7 & N ½ Lot 8	36	21	8 W.	124	25	25	31 06	Aug. 10, 1899	6953	E. M. Scott	Aug. 10, 1899	
Lot 1 & N ½ Lot 2	36	21	8 W.	130	25	25	32 56	Aug. 10, 1899	6955	W. A. Yerger.	Aug. 10, 1899	
S ½ Lot 2 & all Lot 3	36	21	8 W.	125	25	25	31 31	Aug. 10, 1899	6956	E. H. Woods	Aug. 10, 1899	
All (outside levee) from page 32	37	21	8 W.	185	00							
S ½ Lot 8 Sec 36 and Lot 2	37	21	8 W.	148	55	25	37 14	Aug. 10, 1899	6952	W. H. Fitzgerald	Aug. 10, 1899	
Lots 1 & 3	37	21	8 W.	125	58	25	31 39	Aug. 10, 1899	6954	M. Y. Scott	Aug. 10, 1899	

I, E. H. Nall, Land Commissioner, and having in my official keeping as such the records of the State Land Office do hereby certify that the above and foregoing writing and drawing is a true and correct copy of and from the record book in my custody, styled and labeled "Forfeited tax lands 1892, Vol. 1, State Land Office Mississippi" and on page 27 of the said book.

Given under my hand and official seal at Jackson, Mississippi this 13th day of May A. D. 1902.

[SEAL]

E. H. NALL,
Land Commissioner.

Endorsed: Filed Nov. 24, 1905. W. P. Feild, clerk.

373 C. L. JONES, JR., a witness on behalf of the defendants, being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Direct examination:

Int. 1. Please state your name, age, residence and occupation.

A. C. L. Jones, Jr.; 26 years old; live at Rosedale, Mississippi; at present I am employed by the assessor of Bolivar County to make the assessment of taxes, as deputy assessor.

Int. 2. Where did you reside in the early part of 1899, Mr. Jones?

A. Well, sir, a few days after August 8th, 1899, I was on Island 76.

Int. 3. What was your residence just prior to August 8th?

A. Rosedale, Mississippi.

Int. 4. State whether or not you ever resided on Island 76 in the Mississippi River, and how you came to reside thereon.

A. Yes, I was on Island 76 in August, September and part of November, 1899. I was employed by Mr. Charles Scott, an attorney for R. J. McGuire, to go down and take possession of Island 76, and when I got to the island I found no one there except the lighthouse keeper and his father, a young man by the name of Mr. Orton, who was living with them. I made my business known to them; took possession of the island; and I had some notices, I don't remember just exactly how they read, but it was against trespassers. I went out and posted them the afternoon I got there, or part of them.

Int. 5. What was the date on which you arrived at Island 76?

A. Sometime between August 8th and August the 15th.

Int. 6. State whether or not you went to Island 76 for the purpose of taking and holding possession of said island for Mrs. M. Y. Scott and others employed to do so by Mr. Charles Scott, an attorney at law.

(Objected to by counsel for complainants as a leading
374 question.)

A. Mr. Charlie Scott, and gave me a list of the owners' names, which I have.

Int. 8. State what Mr. Charles Scott employed you to do in regard to Island 76.

A. To go and take and hold possession of the island.

Int. 9. For whom?

A. M. Y. Scott, M. M. Scott, W. A. Yerger, E. H. Woods, and there was one or two others, that I don't remember the names of the owners.

Int. 10. After you arrived on Island 76, as above, state whether you took quiet and peaceable possession of said island.

(Complainants' counsel objected to foregoing question as a leading question.)

Int. 11. Who, if anyone, did you find on Island 76 when you arrived there, and give the name of each party?

A. I found the lighthouse keeper, Mr. Palmer Wilson, his father; I never did know what the old man's name was; we always called him "Dad" Wilson, and a young man by the name of C. W. Orton.

When I made my business known to them they yielded possession, and asked me if I wanted them to leave, and I told them that I did not. Orton asked me later on, when he came in, if I wanted him to leave; I told him I did not.

Int. 12. After having arrived on the island state exactly what you did, in your own way, in following out the instructions given you by Mr. Scott, as you have testified to above.

A. Well, sir, I first made my business known and posted my notices, as I mentioned, part of them on the day I got there and the other part the next morning. Mr. Orton went all over the island with me the evening I posted them, and also the next morning.

Int. 13. State whether or not any of the above mentioned gentlemen, or anyone else, objected to your taking possession of said island, as you have testified to above.

A. No sir, there was none on the island that objected until later on Mr. Saunders came.

375 Int. 14. State what the above mentioned parties, if anything, said to you relative to being on said island.

A. Why, they all three, Mr. Palmer Wilson, Dad Wilson and Mr. Orton, agreed to leave the island if I said so.

Int. 15. State whether or not at that time anything was said to you by any of the above mentioned parties, or anyone else, relative to their holding possession of said island for Moore & McFerrin, or anyone else.

A. No sir, there was not; none of them.

Int. 16. Mr. Jones, subsequent to your taking possession of the island, as above testified to by you, state whether or not any one attempted to take possession of said island from you, and state what measures you took, if any, to prevent same, and who, if any one, assisted you therein, going fully into details.

A. Yes sir; the Kate Adams landed one night with a logging outfit and some men; myself and the crowd that was there—Orton, Dad Wilson, Palmer Wilson, and a little negro that I had with me, went down to the boat armed. Going down there the crowd told me that they were with me and if I did not want them to get off why we would keep them back. They each took their stand; old man Wilson, Palmer Wilson, Orton and the negro boy took their stand up in the edge of the thickets with their guns; and told me to stop the first man and they would get the balance; and to start the ball rolling and they would see that nobody else came off, and in that way I kept them from unloading their plunder and their wagons.

Int. 17. Who was with you on the occasion testified to above?

A. I don't know the old man's name, but he was commonly known on the island as "Dad" Wilson, Palmer Wilson, C. W. Orton and the little negro and myself.

Int. 18. State whether or not the logging outfit landed on that occasion.

A. No sir, they did not.

Int. 19. I believe you stated that, when you first went to the island, you posted the notices warning against trespassers. State whether or not you were assisted in doing that by anyone, and give

376 the name of the party assisting you.

A. Yes sir, I was assisted by C. W. Orton.

Int. 20. State whether or not there were any other attempts made by anyone to come on the island, and whether or not they succeeded.

A. Yes sir; some few days after the boat trip, a boat landed in; Mr. Saunders came down with a party—a big crowd of them, 10 or 12 men, with a logging outfit to come on the island. I objected very seriously but had been instructed to use no violence, and I saw the only way to hold it was to go at it in a violent manner, and owing to the instructions that had been given me, I had to let them come on.

Int. 21. Who was Mr. Saunders?

A. He was a timber man and cutting timber and working for Moore & McFerrin.

Int. 22. State all that you did, if anything, relative to preventing Mr. Saunders and his outfit from going on the land; and state especially in connection therewith whether you did everything in your power relative thereto short of resorting to arms and the necessity of killing someone.

A. I told Mr. Saunders that he could not come on the island; I objected to him coming very seriously, used every means I could, still I could not get him to go back; and after talking with him some time I saw there was no use talking any longer, for he was coming there and the only way to keep him back was to kill some one and I had been positively instructed by Mr. Scott not to hurt anyone.

Int. 23. State what you said to Mr. Saunders during the conversation referred to by you with him.

A. I told him that I was there in possession of the island; that I had been instructed not to let anyone come on and to keep them off, and that I would have to make him go back; that he could not stop there; and talked to him about that way all along. I finally got angry with him a little, but did not say anything; and after I saw my little game would not work, I had to let him come on.

377 Int. 24. In other words, state whether or not it was by force that Mr. Saunders took possession of this island in this: That in order to have prevented him from coming you would have had to have killed him.

A. Yes sir.

(Complainants' counsel objects to the foregoing question and any answer made because strictly leading.)

Int. 25. Returning now prior to the time that Mr. Saunders came on the island, as above referred to, state whether or not Mr. C. W. Orton at any time evinced any interest in assisting you to prevent trespassers from coming on the island, and the circumstances in regard thereto.

A. Yes; Mr. Orton did on several occasions come to my tent and wake me up during the night when he thought that a boat was going to land and he would go with me to the river—get his shot gun and go out with me. On one occasion the "Hill City" pulled in and they tied up on account of darkness; he got his gun and went down with me that night and told me to go down to the edge of the boat and see who was going to get off; said he thought they would move up around in above us and get off before we would see them.

Int. 26. State whether or not that subsequent to your taking possession of the island and prior to the time of Mr. Saunders' coming on the island forcibly, as stated above by your testimony, if anyone came on the island and was required to leave by you, and state the circumstances and what, and who the parties were.

A. Yes, there was a party came down—some men came to work for Mr. Saunders they said; they came down the river in a shanty boat, and I told them that I was in possession, and also told his foreman, Mr. Sharp, who was in charge of the crowd, and made them move over to the main land on Mr. Rife's property across the shoot.

Int. 27. State whether or not you went all over the island several times or not during your stay there.

A. Yes, I was all over it a dozen times.

Int. 28. State whether or not there was any property located on the island belonging to Moore & McFerren that you could observe.

378 A. Well, sir, there was nothing on the island at all that you could call property, unless you could call a few old logs that had been cut down—probably 100 or 150; that is about all I saw.

Int. 29. Mr. Claud H. Moore in a deposition taken in this cause states as follows: "There was left on the island a skiff, 500 or 600 logs ready to haul; all the frame work for the fronts, and the tents that we had there; the frame and everything belonging to the front and tent, excepting the flies, were there;" and further states in said examination, "The tent frame work, or rather the tents were floored in and walled up to about four or five feet high and poles were put up over each to throw the fly for a roof; the front was a frame work of poles so as to hold up the cloth part of the roof, and the stables and mangers were made out of posts and other stuff." Now state whether or not, Mr. Jones, there was a frame work, etc., stated by Mr. Moore to have been there, and state whether or not there was a skiff, the property of Moore & McFerrin there, and state whether or not the number of logs indicated, so far as you were able to observe, is correct.

A. No sir, there was no frame works of any tents; there was nothing to indicate that there had ever been a camp on the island, except the camp that old man Wilson and his son lived in. They never floored their tents; did not have any flooring; if they did they didn't leave it there. There was between 100 and 150 old logs that was left scattered about in the woods all over the island, and there were no mangers, corral frames and tent frames—nothing of any kind on the island; there was no sign of any camp ground at all.

Int. 30. State whether or not you saw the skiff above referred to.

A. No sir, there was no skiff there. Mr. Saunders had a skiff, but he sold it to old man Wilson, who sent it down to his son before they left there; his other son down on Catfish Point.

Int. 31. When Mr. Saunders returned to the island state what kind of tents, or camping ground they put up, corrals, etc.; and state whether or not these tents, corrals, etc., were erected anew.

379 A. Yes, they were built right new out of new cottonwood poles, the corrals was, and the tents had no floors in them, and

the only plank that was around the camp was some that was used on one or two of the tents; they nailed or spiked on two plank around two tents, a base plank around the kitchen tent and a negro sleeping tent; they built the corrals out of new poles; I saw them do it.

Int. 32. Where did Mr. Orton stay during the time he was on Island 76?

A. From the time I got there for over a month he stayed with old man Wilson and his boy and myself; eat there with us and slept in old man Wilson's tent; I had a tent of my own I slept in and cooked and eat in.

Int. 33. State when he left your camp, if he left, and where he went, if you know.

A. Yes sir, he left our camp; I don't remember the exact time he left.

Int. 34. Was it after Mr. Saunders came?

A. Yes sir, the latter part of September and he went down to Mr. Saunders. I don't remember just exactly when it was, but it was just after Mr. Hubert Wilson came down there. Mr. Orton was a sort of a dead head and we wanted to get rid of him, and we just agreed to go in and put up the money to live on, and Mr. Orton did not have the money to come up with, and we told him that he would have to come up with his part, as we were unable to feed him any longer. He went down to Saunders to get work, and went down and got work from him.

Int. 35. State whether or not you ever saw Mr. Orton after he had gone down to work for Mr. Saunders, and state the circumstances and the conversation, if any, that you had with him.

A. I never saw Mr. Orton for about a week after he left our camp. He would go out to work before I would get up, and I never went down to the camp at night; and he came up one night to my camp, and went with me down to the river and told me that he had neglected to tell me when I came there that he had charge of that island for Moore & McFerrin, and that he had come up to tell me
380 that he was the man in possession and not me, and that he had been in possession of it for some time.

Int. 26. That was how long after he had been working for Mr. Saunders?

A. About a week.

Int. 27. State whether or not that was the first time that you had ever heard of such a claim on the part of Mr. Orton.

A. Yes sir, it was the first time he had ever said anything to me about having possession of the island.

Int. 28. Who was the lighthouse keeper?

A. Mr. Palmer Wilson.

Cross-examination:

Reserving exceptions to the foregoing deposition, or any part of it for relevancy and irrelevancy, D. E. Myers, counsel for the complainant, proceeds to cross examine him.

Cross Int. 1. What was the necessity and occasion for you to go to the island in August, 1899?

A. Well, sir, I went down to take possession of the island; was sent down by Mr. Charlie Scott.

Cross Int. 2. Did you take a gun with you?

A. Yes sir, and a cooking outfit, bed and servant.

Cross Int. 3. Did you take a shot gun or winchester rifle with you and a pistol?

A. I did, a 45 Colt's pistol, and a shot gun to hunt with.

Cross Int. 4. Did you also have a Bowie knife, or what is known as an Arkansas Toothpick?

A. I had no use for anything like that. I would not want to take a knife to get after such people as came down there.

Cross Int. 5. You were instructed to go there and hold the island against all hazards against outside intrusion, were you not?

A. No sir, I was not; I was instructed to hold it quietly and peaceably.

381 Cross Int. 6. Were you obeying instructions the night Saunders and his logging outfit attempted to land?

A. I did not have any instructions until after that time.

Cross Int. 7. Do you call that quiet and peaceable when you got out your guns and pistols, and marshalled all forces on the island, and stationed your men behind trees and in the thickets with instructions to kill whoever came on the land?

A. I said I did not have those instructions until after that time.

Cross Int. 8. Without any did you do so?

A. I did it without any, yes sir.

Cross Int. 9. What date was it that Moore & McFerrin's boat attempted to land?

A. I don't remember just exactly.

Cross Int. 10. About how long after you arrived there—how many days?

A. About 10 or 12 days.

Cross Int. 11. When you went to the island you knew that Moore & McFerrin's logging outfit was expected to arrive there any day, did you not?

A. No sir, not when I got there; was not looking for them at all; did not know they were coming until they were down there.

Cross Int. 12. You watched every steamboat and skiff or house boat that attempted to land, did you not?

A. Yes sir, I did.

Cross Int. 13. That night that Mr. Saunders first arrived and attempted to land, what time night was it?

A. It was about between 10 and 11 o'clock.

Cross Int. 14. When you heard the steamboat whistle you got the whole force on the island with their guns and pistols and went down to the boat, did you not?

A. I did not hear the boat whistle at all. Mr. Orton come and woke me up and told me that he thought the boat was going to land and he would go down with me and help keep them off.

Cross Int. 15. Keep who off? Who were you expecting?

382 A. Anybody that came on the land, also Mr. Saunders; that was after we expected Mr. Saunders any day.

that was after we expected Mr. Saunders any day.

Cross Int. 16. And that outfit arrived and you marshal*l*ed your armed forces in advance within three or four days after you arrived?

A. I did not marshal*l* them at all; this was some 10 or 12 days after I had been there. Mr. Orton was the man that notified me that the boat was coming to land.

Cross Int. 17. You were then expecting Mr. Saunders?

A. Yes sir.

Cross Int. 18. How long had you been expecting him before that night?

A. Only a few days. He had some men, as I stated, to come down the river in a shanty boat, and I had them to move across the shoot to the main land.

Cross Int. 19. How many days was that after you arrived that Mr. Sharp and the fish boat, or whatever boat it was, attempted to land and you prevented him from doing so?

Mr. JONES: How long was it after I was there?

Mr. MYERS: Yes sir.

A. I had been there 8 or 9 days. Mr. Sharp came down on Sunday I got there—Sunday afternoon, and this was on Tuesday night boat trip.

Cross Int. 20. You knew that Moore & McFerrin and Saunders had been cutting logs and shipping them from that island during the fall and winter of 1898, and the spring of 1899, did you not?

A. I knew that some one had been.

Cross Int. 21. As soon as you went to the island did you not inquire who had been cutting that timber?

A. No sir.

Cross Int. 22. Did nobody tell you?

A. No sir.

Cross Int. 23. Did you coun*d* all the logs; the trees that were cut down and lying on the island?

A. No sir, I did not count them.

383 Cross Int. 24. Then there might have been more than 150, might there not?

A. No sir, I don't think there was.

Cross Int. 25. If you never counted them you positively don't know, do you?

A. I hardly think there were 150.

Cross Int. 26. You say they were scattered all over the island, is that so?

A. Yes sir.

Cross Int. 27. In your examination in chief you say that these 150, or whatever logs there were there, they were saw logs, were they not, and had been cut down for the purpose of shipping, you call them old logs? Now, don't you know that they were cut in the spring of 1899?

A. I don't know when they were cut.

Cross Int. 28. Well, you don't mean to say they were old and rotten logs, do you?

A. The bark was rotten.

Cross Int. 29. But you did find out finally that they had been cut by Mr. Saunders?

A. Yes sir, I did.

Cross Int. 30. For Moore & McFerrin?

A. I don't know who they were cut for.

Cross Int. 31. Well, you do know that Saunders was logging for Moore & McFerrin, did you not?

A. Yes sir, I found that out.

Cross Int. 32. You did know that Moore & McFerrin claimed the island, did you not?

A. I afterwards found it out; I did not know when I went there.

Cross Int. 33. You knew it when Mr. Sharp and the boat came down; I mean the boat that you made go across the river to Mr. Rife's land, did you not?

A. I don't remember whether I knew it then or not.

Cross Int. 34. You say there was no skiff there belonging
384 to Moore & McFerrin?

A. Yes sir.

Cross Int. 35. There was no skiff there at all?

A. Yes, we had several skiffs.

Cross Int. 36. You don't know that they did not belong to Moore & McFerrin of your own knowledge?

A. One of them belonged to Mr. Orton, and one of them belonged to Palmer Wilson.

Cross Int. 37. Well, how do you know that one belonged to Mr. Orton except what he told you?

A. He said he came down the river in it; said he brought it from Ortonville, Minnesota. It had Ortonville on it.

Cross Int. 38. Well, all you know about the other skiff, the one that belonged to Palmer Wilson that he sent to his son, was what Wilson told you himself, was it not?

A. I saw the skiff and it had Saunders' name on it, but old man Wilson told me that he had bought it from him.

Cross Int. 39. That is all you know about it?

A. Mr. Saunders did not send for the skiff after he came back.

Cross Int. 40. How long did you remain on the island as an armed force after Saunders came?

A. I did not remain there as an armed force at all. I stayed there about, I don't remember just exactly how long—three or four weeks or perhaps two or three weeks.

Cross Int. 41. What date did you leave, Mr. Jones?

A. I left there on the 12th of November—12th of November or 12th of October, I don't remember which.

Cross Int. 42. Had you ever been on the island before that trip?

A. Never had, sir.

Cross Int. 43. What was the occasion of your leaving the island?

A. Mr. Charles Scott wrote me and told me that the island had

been turned over to the officers of the federal court, and my services were no longer needed down there.

385 Cross Int. 44. What relation are you to Mr. Scott?

A. None whatever.

Cross Int. 45. Mr. Jones, are you certain that there were no signs of a foundation, or place where there had been tents, and a corral or stables for a logging outfit, that left there in the spring of 1899?

A. There was absolutely no place in the world that showed that there had been a camp there; and nothing in the world in the shape of a tent besides the tent that old man Wilson lived in and the one that I had there. There was no tent posts standing, or carral posts, no foundation, nothing at all.

Cross Int. 46. No signs that there had ever been a tent there?

A. No sir.

Cross Int. 47. And no sign that these people lived there in the fall of '98 and spring of 1899, and had left there in the latter year?

A. I don't know; the water had been over it.

Cross Int. 48. The water had washed over it?

A. Yes sir.

Cross Int. 49. Then if they were there, it is probable that they might have been there and washed away by the overflow?

A. I don't think they would have washed away if they had been in the ground.

Cross Int. 50. Do you know where Mr. C. W. Orton lives?

A. No sir, I do not know; he told me his home was in Ortonville, Minnesota.

Cross Int. 51. What date was it when Mr. Saunders actually landed his logging outfit on that island?

A. I don't remember whether it was Sunday or not; I don't remember just exactly the date.

Cross Int. 52. I understood you to say that when he attempted to land the first time it was 9 or 10 days after you arrived there. Was that correct? I mean the night of the boat; that is the night of the war.

A. Well, there was not exactly any war. It was 10 or 12

386 days after I arrived there the Kate Adams run in there to put off the outfit.

Cross Int. 53. Now how many days after that until Mr. Saunders returned with his outfit and landed on the island?

A. I think it was the following Sunday; I don't remember the exact date.

Cross Int. 54. Was it not day time that time they landed?

A. Yes sir.

Cross Int. 55. Did you see and talk to Mr. Saunders the first time he attempted to land?

A. No sir, Mr. Saunders was not with the outfit at all; Mr. Sharp was there, his foreman.

Cross Int. 56. Did you talk to Mr. Sharp?

A. Yes sir.

Cross Int. 57. Did he not tell you that it was Moore & McFerrin's outfit and that the island belonged to them?

A. That was what he told me.

Cross Int. 58. Mr. Saunders told you the same thing when he came back the second time, did he not?

A. He said something like that.

Cross Int. 59. The night of the landing, or attempted landing, did each of the parties you have mentioned who were with you, have shot guns and pistols?

A. Yes sir.

Cross Int. 60. After Mr. Saunders went to work on that island you excluded C. W. Orton from your mess, because he would not put up the money, did you not?

A. Well, we had taken care of him all the time I had been there, and I thought he might as well get out and work for his grub as me, and I did not feel able to feed him, and the other boys felt like I did.

Cross Int. 61. And he told you he had been left in charge of the island for Moore & McFerrin?

A. After he had gone down there to work and had been
387 there about a week he told me that.

Cross Int. 62. He said he had neglected to tell you that fact at first?

A. Yes sir.

Cross Int. 63. C. W. Orton, you say, lived with Palmer Wilson on the island?

A. Yes sir, and with Palmer Wilson's father.

Cross Int. 64. Who did you say was looking after the light-house?

A. Palmer Wilson.

Cross Int. 65. Well, did C. W. Orton assist Palmer Wilson in looking after the lighthouse?

A. No sir.

Cross Int. 66. You don't know what he did before you went there?

A. No sir.

Cross Int. 67. Well, did he not assist in looking after the lights sometimes?

A. No sir, I don't think he did. The old man and boy himself attended to that part of the work; Orton was always out looking after his fish and seines.

Cross Int. 68. You don't know what Mr. Orton did before you went on the island?

A. Well, I heard old man Wilson say he was too lazy to do anything but fish.

Cross Int. 69. Mr. Jones, that logging party that attempted to land the first night were rather wise in not coming ashore, were they not?

A. Yes, I expect it was a good thing that they did not come ashore.

Redirect examination:

Int. 1. When you were first sent to Island 76 by Mr. Scott to take charge of it, state whether or not he explained to you that
388 Island 76 was the property of his clients, and he desired to hold it for them just the same as one of the managers on his plantations held possession of the property for him; and was it not with that understanding that you went to take possession?

A. Yes sir.

Int. 2. Knowing, therefore, that the island was the property of Mr. Scott's clients, and you having taken quiet and legal possession of same, and you being in possession for these clients, you deemed you had the right to repel any trespassing of any one soever even if necessary to do so, you would have had to resort to violence.

A. Yes, I thought it was my business to keep them away, and I did it first talking to them and told them not to come on, but they said they were coming anyhow, and I thought it was my duty to keep them back, and I did so.

Int. 3. When Mr. Saunders finally came on the island, state whether or not it is a fact that Mr. Scott had informed you to resist his trespassing up to the point of killing him, but instructed you not to go to the extent of violence.

A. After the first resistance, the night the boat landed in short, I reported to Mr. Scott very early next morning what I had done the prior evening, and he told me whatever I done not to hurt anybody, and not to have any trouble; and he instructed me positively not to hurt anyone; to hold the island as long as I could without any trouble, and under these instructions I held the island as long as I could.

Int. 4. State whether or not the shoot, as it is termed, by which I mean the shoot between the island and the main land of Mississippi, in a low stage of water in the Mississippi River, can be walked across, or ridden across.

A. In low water it can be walked and ridden across at most any point; that is the way Mr. Saunders entered with his teams.

Recross-examination:

Cross Int. 1. You were not living there in 1847 and 1850,
389 were you, Mr. Jones?

A. I don't believe I was.

Cross Int. 2. You don't know how it was then?

A. I do not.

(Signed) C. L. JONES, JR.

Endorsed: Filed May 22, 1902. W. P. Feild, Clerk.

W. J. SHACKLEFORD, a witness on behalf of the defendants, being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Direct examination by Mr. A. Y. SCOTT:

Int. 1. State your name, age, residence and occupation.

A. W. J. Shackleford; age 32; residence Rosedale, Mississippi; occupation, civil engineer.

Int. 2. How long have you been a civil engineer, Mr. Shackleford, and what experience have you had? State in a general way with regard; first, to any employment whatever on the levees and Mississippi River; second, relative to surveying.

A. Well, I don't know exactly what you would mean by how long I had been a civil engineer. I have never done anything else; never followed any other profession, and of course, I started young, at 18 years old; as soon as I left school. So you might say that I have been in the profession for about 14 years.

Int. 3. State whether or not you have done any surveying and platting and the general work relative to laying off and mapping lands, etc., during that time.

A. I have done nearly every kind of surveying.

390 Int. 4. How long, Mr. Shackleford, have you been living in the Delta?

A. Since October, 1892.

Int. 5. During that time did you, or not, live along or near the banks of what is known as the Mississippi River?

A. Yes, I have always been on levee work and bank surveys.

Int. 6. In whose employ were you?

A. For the first seven years I was in the employ of the United States Government.

Int. 7. And after that?

A. The Mississippi Levee Board.

Int. 8. Mr. Shackleford, I hand you the field notes of Township 21, range 8 west of Bolivar County, consisting of Exhibit B to the deposition of E. H. Nall in this case, and bearing the marks "Diamond 17-F" and "Diamond, 8-B"; and I also hand you a map of Township 21, range 8 west of Bolivar County, Mississippi, attached to the deposition of E. H. Nall filed in this case and marked Exhibit C, said map being dated May 31st, 1830, and signed by Joseph Dunbar, Surveyor South of Tennessee. Have you ever seen these field notes and maps before? And if so, state when and under what conditions, and for what purpose they were handed you.

A. Mr. Scott gave them to me several days ago to look at and see if the plat corresponded to the field notes, which I did, examining them carefully, and find that the plat does correspond exactly with the field notes.

Int. 9. State whether or not you made any independent tracing of Island 76 from the field notes handed you and of the bank line of the mainland in township 21, range 8, and state what you ascertained relative to the accuracy of the map filed as "Exhibit C" attached to Mr. Nall's deposition.

A. I made an independent plat from the notes of the river bank

and a traverse of the Island from the notes, not a tracing, and after comparing it with the map itself, and found them to agree.

Int. 10. When you say that you made an independent plat from the field notes, you mean from the Exhibit B handed you and
391 attached to Mr. E. H. Nall's deposition, do you not?

A. Yes sir.

Int. 11. You should then say that the map marked Exhibit C and attached to Mr. E. H. Nall's deposition, was taken and platted from the field notes of Township 21, range 8, which consists of the whole of Exhibit B, attached to Mr. Nall's deposition?

A. Yes sir.

Int. 12. Have you scaled the distance from Island 76 across the shoot to the main land or not?

A. I have; I have forgotten the exact distance, but have the scale with me and can scale it now.

Int. 13. Please scale the distance from Island 76 to the mainland in township 21, range 8, and state what that distance is in chains and in feet.

A. Well, the narrowest point is about on the line lying at the river bank between lots one and two of section 4; the distance measures about 8 chains. Of course that is a close approximation scale measurement.

Int. 14. How much is that in feet?

A. 528 feet.

Int. 15. In scaling the distance across the shoot you measured from the bank of the Mississippi River on the line between lots 1 and 2 in section 4, directly across to lot 8 in section 36 of Township 21, range 8, did you not?

A. Yes sir.

Int. 16. I believe you stated, Mr. Shackleford, that you made from the field notes an independent tracing of the plat; and I believe you also stated that in comparing the plat made by you with the map handed you here, filed as Exhibit C to Mr. Nall's deposition, that you found them to tally, did you not?

A. Yes sir.

Int. 17. I now ask you to file with your deposition the field notes of township 21, range 8 west in Bolivar County, Mississippi, marking same as "Exhibit A."

A. I do so.

392 Int. 18. I ask you to file the map of township 21, range 8, west to your deposition, marking same as Exhibit B.

A. Yes sir, I do so.

It is agreed by counsel for complainant and defendant, that it will not be necessary to make new copies of the notes and map to attach them to Mr. Shackleford's deposition, but that they will be considered as filed, being attached Exhibits to Mr. E. H. Nall's deposition heretofore filed in this case.

Int. 19. Where, Mr. Shackleford, is Island 76 in the Mississippi River located?

A. It is just above Bolivar Landing and is the second island below the mouth of the Arkansas River.

Int. 20. What is the first island below the mouth of the Arkansas River?

A. Ozark Island.

Int. 21. Ozark is number what on the Mississippi River Commission maps?

A. On the Mississippi River Commission maps it is numbered 75.

Int. 22. State whether or not the banks of the Mississippi River are highest immediately on the bank, or at a distance away from the bank?

A. They are, that is the general rule—the bank is higher at the river than anywhere else, and slopes back; the drainage all goes back from the river.

Int. 23. The whole drainage then of the Mississippi River and other alluvial streams as well, so far as you know, is back from the river?

A. Well, I only know that from the general rule, and only of the Mississippi River.

Int. 24. That is the case of the Mississippi River?

A. Yes sir.

Int. 25. Does that rule, or not, apply to islands as well as to the main land of rivers?

A. Yes sir, it generally does.

393 Int. 26. The highest part of the island being situated where?

A. On the channel side.

Int. 27. I hand you a part of Exhibit B to Mr. Nall's deposition marked "8-B," consisting of the field notes of Island 76. Examine this please and state what is the highest part of Island 76 from the field notes at the date they were made?

A. Well, I find here in the field notes beginning at the upper end of the island the first course is south 28½ west, showing that the traverse went down the west bank of the island; then there is a description of the bearing, and as usual, a description of the land passed over. In that course he says, "35 chains enter cane, above high water mark." Then he does not mention the ground for several more courses. The next course I see he says: This line was open woods with vines and briars and in places above high water mark. In the remarks at the end of the surveyor's notes of the island, I see he says: "North and west side is mostly cane, above high water mark; soil very good."

The foregoing question excepted to by complainant's counsel as incompetent, because a mere repetition of what the field notes show themselves; they being the best evidence.

Int. 28. State if you know, Mr. Shackleford, the custom relative to clearings along the banks of streams, especially with reference to where said clearings are usually made? Whether immediately on the banks, or a considerable distance from same?

A. Well, they are generally made right on the banks, as a matter of convenience.

Int. 29. Where clearings are made on an island for instance, such

as Island 76, state which side of the island they would in all probability be made upon.

(The foregoing question excepted to by counsel for complainant, as incompetent; because, first, calling for the opinion of the witness, and asking for the conclusion of a fact.)

A. Clearings would more likely be made on the channel
394 side, because the ground would be higher near the channel, also on account of convenience for landings.

Cross-examination by Mr. D. E. MYERS:

Complainants, by attorney, reserving all exceptions to each part of the foregoing deposition, the questions as well as the answers thereto respectively, proceeds to cross examine subject thereto.

Cross Int. 1. What special surveying have you done in the Delta since 1892?

A. What kind of surveys do you mean?

Mr. MYERS: That's what I am asking you. What is the character?

A. I have made surveys of caving banks; I have made surveys for new levees; and I have made numerous surveys to locate section lines.

Cross Int. 2. What particular line of duties did you perform whilst in the Government employ?

A. Levees. I was on levee work and surveys of caving banks, and surveys for new lines and topographical surveys.

Cross Int. 3. Well, what have been your duties with the Levee Board—simply surveys for the levee lines?

A. No sir. I have had considerable of what you may call land surveying, locating property lines, because the Levee Board has rights of way to deal with and the Government does not; and since I have been in the employ of the Levee Board I have had to do a good deal of land surveying, locating section lines. I have also done private work outside of my duties.

Cross Int. 4. What position did you occupy with the Government? Were you Chief Engineer with the Government?

A. No sir. Do you want to know what position I occupied?

Cross Int. 5. What position did you occupy respective to the Government?

395 A. I occupied the position of an Inspector. The duties are about the same that I now have with the Levee Board as Assistant Engineer.

Cross Int. 6. Those duties as Inspector—what were they?

A. Well, I did surveying; I was in charge of the work. I made surveys of proposed work—levee work—and made surveys of caving banks; surveys for new levee lines, and as I stated a while ago, topographical surveys in connection with them.

Cross Int. 7. You have stated that you have examined the field notes shown you, and the map shown you, and that the field notes corresponded with the map.

A. Yes sir.

Cross Int. 8. Or the map with the field notes?

A. Well, the map with the field notes, or the field notes with the map, either way you want to put it; the two correspond.

Cross Int. 9. Well, did you make an independent survey to test the existence of the lines yourself?

A. No sir.

Cross Int. 10. Or did you simply compare it with the field notes?

A. Made a plat by the field notes on a separate sheet of paper, then compared my plat with that plat.

Cross Int 11. Made no actual survey at all?

A. No sir.

Cross Int. 12. Then all you did was to compare the field notes with the map?

A. That's all.

Cross Int. 13. As a matter of fact you do not know then whether the different lines on this plat on the Mississippi side of the River are correct or not by actual survey?

A. I know that the section lines are. I have run out several of these lines there on that bank and the shoot between Island 76 and the main bank in the last few years. I know that the bank line would not correspond now with the map.

Cross Int. 14. The bank line would not correspond with the map?

396 A. No sir, the bank lines as they exist would not correspond with the bank lines shown on the map, because the banks have caved since that map was made.

Cross Int. 15. There has been considerable caving there between Island 76 and the Mississippi side, has there not?

A. Yes sir.

Cross Int. 16. About what distance has it caved back, do you know?

A. No sir, I would not know without consulting a plat, or something of that kind. I have not my notes; it has been four years since I made any survey there, but I know it was considerable distance. It would be guess work for me to state.

Cross Int. 17. Over 100 feet?

A. Yes sir.

Cross Int. 18. Over 200 feet.

A. Yes sir, over 200 feet.

Cross Int. 19. To your best recollection about what distance?

A. To the best of my recollection it must have been 500 or 600 feet.

Cross Int. 20. That it had caved back since the original survey as indicated by this map?

A. Yes sir.

Cross Int. 21. As to Island 76 itself, did you make any survey of the actual island to see how it now corresponds with the field notes?

A. No sir.

Cross Int. 22. You gave the width of a shoot, as you call it as 528 feet?

A. Yes sir.

Cross Int. 23. Was that at the narrowest point?

A. Yes sir.

Cross Int. 24. That was at a point about two thirds of the way down the island, was it not?

A. Yes sir.

397 Cross Int. 25. Is there any clearings on the Mississippi side opposite Island 76, and farms there, or a farm?

A. There is a strip of woods along the bank, just back of that strip of woods—the land back of the levee is all cleared.

Cross Int 26. There is no cleared land then between the levee as it now exists and the bank of the river?

A. Yes there are. There are one or two little places that have been recently cleared.

Cross Int. 27. In the last four or five years?

A. They have been cleared of second growth timber in the last four or five years. The timber on that bank is all second growth cottonwood.

Cross Int. 28. How far is it from the levee to the east bank of the Mississippi River opposite with Island 76? I mean feet.

WITNESS: About the average distance all the way up, you mean?

Mr. MYERS: Yes.

WITNESS: It will not average one quarter of a mile, about one fifth of a mile, I would judge.

Cross Int. 29. Just east of the levee opposite with Island 76, you say it is all cleared?

A. Yes sir. I mean the land that adjoins the levee. Of course I do not mean all the land that lies directly east of that.

Cross Int. 30. Did you ever do any surveying on Island 76 at all?

A. No sir.

Cross Int. 31. You know very little about the topography of Island 76?

A. I know a good deal about it. I have been all over it a good many times.

Cross Int. 32. Any cleared lands on it?

A. There was a few years ago a little clearing on the upper end but I think it has been abandoned.

Cross Int. 33. Do you recollect what time that clearing was made?

A. It was there when I first saw the island, an old house on it.

Cross Int. 34. What date was that?

398 A. It was in 1892, the first year I came to the swamp.

Cross Int. 35. That was at the head of the island?

A. Yes sir.

Cross Int. 36. That is all unoccupied now?

A. I am not positive about it; I think it is.

Cross Int. 37. How long since you were on the island?

A. Been about five years.

Cross Int. 38. An examination of the field notes, which you have exhibited would they correspond now as it now exists?

A. No sir, they would not. The island has moved eastward

since the survey was made. It caved on the west side and built to the east.

Cross Int. 39. Caved on the west?

A. Yes sir.

Cross Int. 40. That the Arkansas side, the west side?

A. Yes sir.

Cross Int. 41. Is the island caving there now?

A. It was the last time I saw it.

Cross Int. 42. You spoke of considerable caving, however, going on on the Mississippi side opposite the island. During what period have you seen that caving—has come under you own observation?

A. There has been no caving there whatever since I have known the island.

Cross Int. 43. I don't speak of the island.

A. There has been no caving on the main bank since I have known it.

Cross Int. 44. Of course, you don't know anything about the situation of affairs of that island 30 or 40 years ago?

A. No sir, not by personal observation.

Further deponent saith not at this sitting.

(Signed) W. J. SHACKLEFORD.

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Clerk, by W. Presley Feild, D. C.

For Exhibit A to this deposition see Exhibit B, folio 341 this record.

For Exhibit B to this deposition see Exhibit C, folio 367 this record.

399 WILLIAM MCC. ANDREWS, a witness on behalf of the defendants, being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Direct examination by Mr. A. Y. SCOTT:

Int. 1. State your name, age, residence and occupation.

A. William McC. Andrews; 36; Greenville, Mississippi; civil engineer and surveyor.

Int. 2. How long have you been a civil engineer?

A. I have been in the surveying business in various capacities since 1890.

Int. 3. What position, if any, do you now hold, and with whom?

A. I am employed at present, and have been for the last 4 or 5 years with the Mississippi Levee Board as Assistant Engineer.

Int. 4. What are your duties in that capacity?

A. Surveys of river banks; levee surveys, construction work. While I am employed by the Board, on the outside occasionally land surveys.

Int. 5. You are familiar with the Mississippi River its banks and

channel, in the usual work relative to construction of levees and so on, are you?

A. Yes sir in this district. From the upper Bolivar County line down to the neighborhood of Vicksburg.

Int. 6. State what you know to be a fact, Mr. Andrews, relative to the heights of banks of alluvial streams generally, and especially with the Mississippi River, with reference to whether it drains into or from the Mississippi, and whether the land is higher on the immediate banks, or back from the river.

A. The banks on all alluvial streams with which I am acquainted are generally higher at the bank of the river, than further away from it. Locally in some cases the bank may be a little lower, but as a rule higher.

Int. 7. Is that applicable to islands in the Mississippi River as well?

400 A. Particularly so to islands.

Int. 8. The highest part of the island then is where?

A. Is at the side next to the channel of the river, wherever the channel has remained for a long time on that side of the island.

Int. 9. You mean by that if there should have been an extensive cut off of the river, that probably for a time the land immediately next to the river would be lower?

A. Yes sir, and adjacent to the cut off; but after a term of years it would become higher again from deposits from the river.

Int. 10. I hand you, Mr. Andrews, a map bearing the certificate of Binger Hermann, Commissioner of the Land Office and Ex-officio Surveyor General, which has the following certificate to it: "Surveyor's Office, St. Louis, 22nd June, 1821," signed by Wm. McRee, Surveyor of Public Lands in Illinois, Mississippi and Arkansas. Please examine that map, and state by whom the survey was made and when.

A. The map states that it is a plat of fractional townships 11 and 12 south of the base line, range 1 East of the 5th Principal Meridian; survey made in February, 1827, by Daniel Miller, Deputy Surveyor.

Int. 11. Now please state whether or not Island 76 is sectionized in that map or not.

A. It is not.

Int. 12. The island is noted on the map, is it not?

A. Yes sir.

Int. 13. Where, from that map at that date, was the channel of the Mississippi River?

A. Between the island and Arkansas.

Int. 14. In other words, the channel is west of the island.

A. Yes sir.

Int. 15. Is the distance across the main river above and below the island given on the map?

A. No sir, it is drawn to scale, and points on the island have been located by triangulation from the Arkansas side.

Int. 16. By means of the triangulations from the Arkansas
401 side, could not the distance to the Mississippi bank be ascertained?

A. Yes sir, by triangulation of scale.

Int. 17. Then does not the map give the width of the river bank above and below at the point indicated by the triangulations?

A. Certainly.

Int. 18. What is the width of the river opposite the east side of section 19, 11-1 East?

A. 55 chains.

Int. 19. What is the distance across the river opposite the Northeast quarter of section 28 of township 11, range 1 East?

A. 50 chains.

Int. 20. What is the distance across the river at the Southwest corner of section 4, township 12, range 1 East?

A. 36 to 37 chains, about 36½ chains.

Int. 21. Now, what is the distance across from the northeast corner of section 34, township 11, range 1 East to the northern point of the island?

A. 89 chains.

Int. 22. What is the distance from the quarter section of the township line between 11 and 12, range 1 East, across the channel to the main bank?

A. 81 chains.

Int. 23. What is the distance across the river from about the middle of section 3, — 12, 1 East to the foot of the island?

A. 77 chains.

Int. 24. From that map, what is the distance from the east bank of the island across to the main shore opposite?

A. It is 22½ chains.

Int. 25. That distance is not an actual measurement as the other distances above referred to, but is an estimate curvature from the fixed points on the Mississippi and island banks at either end of the island, is it not?

A. Yes sir. The method probably adopted by the surveyor in that case was to triangulate to one bank, either the island bank or the Mississippi bank, and then by estimating the distance to
402 space the other bank; from that getting, the approximate width of the channel on that side.

Int. 26. In other words, though the distance between the east bank of the island to the Mississippi shore is not by actual measurement of the surveyor, it is, from the two points taken above on the Mississippi shore and the two points at the head and foot of the island, an estimate distance of the surveyor at that time?

A. That was not the meaning I intended to convey, exactly. The points at the foot of the island and at the head of the island and corresponding points on the Mississippi shore were carefully fixed by triangulation and the island bank, and the curve of the Mississippi bank was then sketched in; then the surveyor estimated from the bank, so fixed the width of the channel by eye measurement, and sketched in the other bank to correspond with that—the bank already fixed.

Int. 27. Now taking the map before you with the shore line fixed as there stated, where would the main current, or real channel of the Mississippi River be, of necessity?

A. On the west side of the map is a north and south line marked

at the head "A." That is the 5th principal Meridian, from which these townships are located in an east and west direction. I take it from the map that there was a caving bank on the Mississippi side opposite the upper end of that meridian, or point where the meridian intersected the right bank of the river at the letter A. The caving bank was on the Mississippi side opposite the letter A. That is shown by a curvature and concave bank on the Mississippi side. The current from this is deflected to the Arkansas side and struck on the face of section 19, 11,-1 E; following the Arkansas side, creating a caving bank down to the northeast corner of section 20, 11-1 East; thence deflected to the Mississippi side creating, as you see, opposite the letter "D" on the Arkansas side, and above the island, another concave bank which is on the Mississippi side; thnce passing down between the island and the Arkansas shore, creating a concave bank on the island and undoubtedly a caving bank, until it strikes below the island at a point on the Mississippi bank due south of
403 section 4,-12-1 East. Commencing below that point on the Mississippi bank a caving bank for an indefinite distance down, not shown by the present map. Further, the contour of the Arkansas bank shows that the current was not affecting it as it did the Mississippi bank and is round between the island and the Arkansas bank at section 34,-11-1 East in such a way as to show that the current had followed smoothly around that bank.

Int. 28. In case, at that date, the current or channel had been to the right of the island, state whether or not there would have been the caving bank on the Mississippi side just opposite sections four and five Township 12, range 1 East, or not.

A. No sir, there would not. Further the points shown on the map, the salient points in shore line at X and Y on the Mississippi bank would not have existed.

Int. 29. If the current had been to the right of the island?

A. Yes sir.

Int. 30. State where the caving would have been in case the current had passed to the right of the island with reference to the Arkansas shore line?

A. There would have been a caving bank and a concave bank of the river, front of section 27, township 11, range 1 East below the point marked "D," and a caving bank on the Arkansas side on the river, front of section 4-12-1 East.

Int. 31. The points marked X and Y on the map were made by you, were they not, Mr. Andrews, for the purpose of illustrating your former answer.

A. Yes sir, to show the location of certain points on the Mississippi bank.

Int. 32. Please file with your deposition as Exhibit A the map referred to.

A. Yes sir, I do.

Int. 33. I hand you, Mr. Andrews, map of township 21, range 8 west, Choctaw District of Mississippi, marked Exhibit C to the deposition in this case of Mr. E. H. Nall. Please examine same,
404 and scale the distance between Island 77 and the main shore of Mississippi.

A. The distance between the Mississippi main shore and the island varies.

Int. 34. Give the shortest distance first, and then the distance at the head of the island, as designated on the map.

A. The shortest distance is opposite the northwest corner of section 4, township 21, range 8, and is 8 chains. The distance at the head of the island *is* designated on the map is 29 chains.

Int. 35. Where does the main channel of the Mississippi River appear to run from that map, Mr. Andrews, taking that map as correct?

A. Taking that map as correct, the main channel of the river ran to the west of Island 76. It was apparently the intention of the surveyor, who made the survey, to convey that impression; for he has plainly marked the channel to the west of the island, "Mississippi River," and further has placed the customary arrow in that channel to show the course of the current.

Int. 36. Independent of the words, "Mississippi River" to the west of the island, and accepting the map as correct, and taking the distance 29 chains across from the Mississippi shore to the head of the island, and the distance 8 chains across from the Northwest corner of section four, township 21, range 8, across to the island, as correct at that date, state where the channel of the Mississippi River would of necessity have been with reference to Island 76, and state your reasons for so holding.

(The foregoing question excepted to by counsel for complainants first, as leading; second, as calling for an opinion of the witness; third, it calls for a conclusion of a fact.)

A. The map shows at the upper end of the island in the chute between the island and the Mississippi shore, that the chute is 29 chains wide. At the northwest corner of section 4, by which I mean the northwest corner adjacent to section 3, the scale shows that the chute is only 8 chains wide. If the depths were uniform throughout the chute, more water could enter at the upper end than could
405 pass through the throat at the northwest corner of section 4. That being the case, the current would be swiftest in the throat near the southwest corner of section 4, and sluggish at the upper end of the island. The consequences would be that the water entering at the upper end of the chute, charged with the sediment of the Mississippi would have its current slackened the moment it entered the chute and left the Mississippi River; and a slackening of the current would cause precipitation of all the heavier deposits carried. In consequence only the greater portion of the lighter sediment, and the water, would pass through the chute. That sedimentation in the upper end of the chute would only have one result; that would be the creation of a bar or shoal.

Int. 37. The bar or shoal then being at the upper end, state what of necessity would come of the main body of the water of the Mississippi River?

A. It would be compelled to pass to the west of the island.

Int. 38. State then whether or not it is a fact, that the width of

the island at the narrowest point, what you refer to as the throat, shows conclusively that the main body of channel of the river, could not have passed through the chute.

WITNESS: Do you mean the width of the island, or width of the chute?

Mr. SCOTT: I mean the width of the chute, and meant to so state in my question.

A. The reasons that I gave, conclusively prove to me, that the water of the Mississippi River, or the bulk of it, could not have passed through that chute. I know of no place on the Mississippi River within the reaches, from the Coahoma-Bolivar County line to a few miles below Vicksburg, where any great volume of the river's water passes through a chute, or space at low water, of anything like the width of that chute at the northwest corner of section 4, township 21, range 8; that width 8 chains, representing only 528 feet.

Int. 39. I ask you, Mr. Andrews, to file the map of township 21, range 8 west, shown you as Exhibit to Mr. Nall's deposition as Exhibit B to your deposition.

406 A. I do.

Int. 40. I hand you, Mr. Andrews, purporting to be a map of fractional sections 35 and 36 in township 11 South of the base line, which is dated Little Rock, Arkansas, 23rd December, 1846, and signed by William Pellum, Surveyor of Public Lands in Arkansas. This map being certified to by Binger Hermann, Commissioner of the General Land Office, Washington City. Please examine same and state where the Mississippi River ran at the date of the map with reference to Island 76.

A. Judging from the outline of the Arkansas shore, and the island shore, it passed west of the island, and between the island and the Arkansas bank. The surveyor in this case has also indicated that the channel, or the current of the Mississippi River lay between the island and the Arkansas bank by writing the words, "Mississippi River," plainly in that channel, and placing opposite the head of the island and in the channel the customary arrow to indicate the direction of the current.

Int. 41. Independent of the words and the arrow, the contour of the Arkansas bank and the bank of the island, indicate that the channel passed west of the island, do they not?

A. Yes sir; and not only that: Now at the date when that survey was made, it was customary to make clearings along the bank of the river first, because of their accessibility to means of transportation; and you will notice that the west bank of the island has several clearings located thereon; that being the portion of the island closest to transportation to the river; and also the ground which was highest and best adapted to cultivation in the day when there were not levees to protect the land from inundation. Further the surveyor in running these lines started a random line at the northeast quarter corner of section 34, township 11, south, 1 east: He ran south 24½ degrees east, 50 chains; thence south 18 degrees west, 21 chains. Then you see a course directly across the river, approximately at right angles to the banks bearing east, 47.29 chains. And now from my

acquaintance with the methods of surveyors, I would say that
407 he followed this plan to avoid cutting through the willows and bushes; starting at the point mentioned running out along the upper line, the first course. Then he laid off the second course south 18 degrees west 21 chains, and using that as a base line sighted from each extremity on the line, taking bearings on a point on the island bank, and then calculated that distance of 47.29 chains across the channel of the river.

Int. 42. He did that by triangulation?

A. By triangulation.

(The foregoing answer excepted to by counsel for complainant because it is strictly argumentative, and in the nature of a stump speech.)

Int. 43. Please file the above map with your deposition marking it Exhibit C.

A. I do.

Int. 44. You are familiar, are you not, Mr. Andrews, with the Mississippi River from Coahoma County line south to Vicksburg?

A. Yes sir.

Int. 45. Please state where Island 76 is situated?

A. The best way to locate that, would be to say that it is opposite and just above the town of Bolivar, Mississippi, and it is also the second island below the mouth of the Arkansas River.

Int. 46. What is the first island below the mouth of the Arkansas River?

A. That is known as Ozark Island.

Int. 47. And is numbered what on the maps of the Mississippi River Commission?

A. I think it is 75.

WITNESS: I might make one more statement with the consent of the parties interested.

Mr. SCOTT: Yes, what is it, Mr. Andrews?

WITNESS: It is that a number of years ago and recently, I was looking over one of the government reports; it was the report of the Mississippi River Commission for 1893. In that report I found several old maps. It is the report of Capt. Palfrey, Corps of Engi-
neers, U. S. A. There are maps there dating back to 1770
408 or 1775. In all those maps this island is shown, under different names, as Mulberry Island, Corn Island, and Island of Blood, in the same location in which it now stands, having the major portion of the channel on the west side of the island.

(Complainant excepts to the foregoing and last volunteered statement of the witness as incompetent, it being purely hearsay and what he has read from maps and reports, which if evidence at all, are the best evidence. Second, incompetent because it is the witness' opinion from the examination of what he has read in this book, and his ideas of what the maps show)

Cross examination by Col. D. E. MYERS:

Complainant, by attorney, reserving all exceptions to each part of the foregoing deposition, the questions as well as the answers thereto respectively, proceeds to cross examine subject thereto.

Cross Int. 1. I understand that you have been a civil engineer since 1891, is that correct?

A. I think I stated that I had been in various capacities engaged in civil engineering work since that time.

Cross Int. 2. In what capacity were you first engaged in and with whom?

A. Rodman and instrument man in the government surveys, Lake Providence reach below Greenville. This survey included location of bank lines, soundings and discharge observations.

Cross Int. 3. What particular duties did you perform at that time?

A. While there I ranked as a rodman, but my duties were almost all those of an instrument man.

Cross Int. 4. What do you mean by rodman?

A. It is generally the man who carries the rod in the surveying party.

Cross Int. 5. How long were you engaged in that survey?

409 A. I was engaged in that from October until late in December, or nearly the first of January the next year; that was from October '90 to nearly the first of January '91.

Cross Int. 6. Well, those surveys did not include the river at Island 76?

A. Not at that time, no sir.

Cross Int. 7. Where were you next engaged and in what surveys?

A. In levee work; from about Huntington down to the Washington County line below Offutts.

Mr. MYERS: I don't exactly understand from the points.

WITNESS: It was levee work on the Huntington point; construction work.

Cross Int. 8. Where is that at?

A. In the southern part of Bolivar County?

Cross Int. 9. That below Island 76?

A. Yes sir.

Cross Int. 10. Was from about October, 1890, to about January, 1891, your only experience with the United States Government?

A. No sir. I was employed with them almost continuously up until—I believe it was February, '96.

Cross Int. 11. In what locality were you employed during that last mentioned period to '96.

A. After a short time on levee work, the party whose place I occupied returned, and I was transferred to harbor work in the vicinity of Vicksburg, and Vicksburg Harbor, Mississippi.

Cross Int. 12. You continued there until 1896?

A. No sir.

Cross Int. 13. Well, how long did you remain in the harbor work?

A. I was in the harbor work at Vicksburg and vicinity until about

September, 1893, when I was placed on levee work on the Arkansas River, near its mouth, opposite Island 76.

Cross Int. 14. What were your duties, and what particular class of work did you do in the harbor at Vicksburg?

A. Well I had charge of the dredging—surveys prior to
410 dredging work; and the surveys upon the completion of dredging work; and shore lines; and surveys in relation to the channel of the river.

Cross Int. 15. The surveys of the dredging work; to what extent did that go, I mean the territorial limits of it from Vicksburg?

A. Well, the dredging work covered (the part I managed) about a mile; it covered about 1½ miles of canal. There was work besides that on the other side—shore lines, and shore lines on the Mississippi side.

Cross Int. 16. Did that represent the mile and a half?

A. During the time that I was there, there was the shore line on the Louisiana side that we kept up. We were required, you understand, to keep a correct record of the caving or change in shore line up above Vicksburg opposite Kings point.

Cross Int. 17. How many miles was that?

A. That was over three miles above the incline at Vicksburg point opposite Vicksburg.

Cross Int. 18. Well, after '93, what did you do from that time up to '96?

A. The government started the construction of the Arkansas River levees from just below Red Fork down the Arkansas River between Red Fork and Arkansas City. I was engaged there, first in surveys for the location of levees; surveys of abandoned levees and surveys of shore lines from the Lincoln-Desha County line on the north, south to a point almost opposite Rosedale, nearly opposite Terrene above here; that is shore lines on the Arkansas River, and also in '94-5 and 6 on construction work and on surveys in the vicinity.

Cross Int. 19. What do you mean by vicinity?

A. I mean the region from Red Fork down to what is known as the old elm tree opposite the town of Rosedale.

Cross Int. 20. Then this last work was on the Arkansas River.

A. The work to Feb'y '96 was on Arkansas River.

Cross Int. 21. From '96 up to the present time?

411 A. From '96 to '97 I was not employed in levee work, but was up in Missouri rusticating on my farm.

Cross Int. 22. From '97 down to now?

A. In '97 I was again employed in government surveys below Greenville, at Lake Lee and points below. My headquarters was at Lake Lee. I had supervision of the work as far down as——

Cross Int. 23. That was all below Vicksburg?

A. All that I did below Vicksburg.

Cross Int. 24. Then the foregoing is all the experience you have had with the Mississippi River, and its shore lines, and its various changes and eccentricities?

A. No sir.

Cross Int. 25. Well, when did you have any other?

A. After my employment with the Government in the fall of '97 and spring of '98 below Greenville, as above stated, I resigned my position with the Government in March '98; went into business for myself—levee work, construction work with disasterous results, owing to low prices and extremely bad weather in '98. In the fall of '98 —November 3rd I believe—I relinquished my contracting business and entered the employ of the Mississippi Levee Board; engaged for the first period of my employment on what is known as the Huntington Short Line surveys, (surveys of Huntington point) on which surveys I spent, it would be hard to say how much time, over a period of several years. I believe the litigation was settled in 1901, was it not, Mr. Scott?

Cross Int. 26. What was the Huntington Short Line?

A. It was the surveys of the lines thrown out, and the shore lines changed from Mound Landing down to the county line and across what is known as Huntington Point, and the levee there was given the name of the "Huntington Short Line" being a short cut across Huntington point.

Cross Int. 27. Where did that commence and how far did it extend down the river and how far below Island 76?

A. Commenced about 15 miles below Island 76, and extended
412 generally in a very nearly north and south direction about 4½ miles to the old levee near what is known as the old Offutt Quarters.

Cross Int. 28. Well then, taking all of the foregoing, is that all of your experience in watching the surveys and particularly noting the changes of the Mississippi River.

A. No sir. The larger part of my time since employed by the Board in November of '98 to the present time has been devoted to rights of way work, and to surveys relating to levee location and shore lines on the Mississippi River. During that period I surveyed the shore lines at caving bends especially, and in those where the banks are stable over the greater part of the distance from the Bolivar-Coahoma County line to Brunswick, Mississippi. Some of those surveys extend along the upper portion of Stromville front, opposite which lies Island 76.

Cross Int. 29. Well, from the foregoing I understand you to say that you thoroughly understand all the eccentricities of the Mississippi River, in its cut offs and cavings, and the reason for them? Am I correct?

A. If I did, I would not be drawing a little $125.00 a month. No man understands that. Each caving bend is a problem in itself.

Cross Int. 30. Going back to 35 or 40 years ago, it is a little difficult for you, even with your large and varied experience, to state positively how a thing was, and how it was done, or how the river run, why it run, and why it could not get through a given space?

A. I must thank the gentleman for the compliment paid me as to my large and varied experience; but I must say that there is much proof that may be had from maps showing the location of river points, from the methods used by surveyors in making their sur-

veys, and from the topography of the land as shown by those maps, of the channel of the river. I have only attempted to show as best I could what those must have been.

Cross Int. 31. You are not certain that those conditions did exist and you arrived at the absolutely correct conclusion?

A. I am satisfied myself that I do.

413 Cross Int. 32. Is it not a fact that the Mississippi River is conceded to be rather an eccentric stream?

A. Yes sir, it is rather erratic.

Cross Int. 33. Is it not a little like George D. Prentice described matters and things: When God Almighty created the world and the waters and everything that was in them, and the planets and the sun and the moon and the stars, that he fixed limits to them; when he created the Mississippi River, he turned it loose and told it to rip and it has been ripping ever since?

A. George D, was indulging in metaphor, and he had probably visited Napoleon, Arkansas.

Cross Int. 34. Napoleon was wiped out once very suddenly, was it not?

A. Very suddenly, yes sir.

Cross Int. 35. Napoleon ain't very far above Island 76, is it?

A. No sir, it is quite a piece.

Cross Int. 36. How far is it?

A. It would be hard to say just how far. It is just below the mouth of the Arkansas River.

Cross Int. 37. It is not over 10 or 12 miles, is it?

A. I should judge that would be close to it.

Cross Int. 38. You were not there in 1821, '31, '25; nor there in 1880 and 1885, were you?

A. No sir.

Cross Int. 39. On Exhibit C to your deposition about which you have testified; now all you have testified in regard to Exhibit C being the map filed in 1846, as appears, all you have testified to is from the appearance of that map and your deductions from it?

A. Yes sir, I was not there.

Cross Int. 40. You never verified any of those surveys or triangulations?

A. No sir.

Cross Int. 41. You spoke of a caving bank on the west shore, or Arkansas shore, which, in your opinion, indicated that the channel ran at a certain place.

414 A. I think you are mistaken as to my saying that it was the Arkansas shore. I think it was the west shore of the island in my testimony in reference to Exhibit C.

Cross Int. 42. Then as to the west shore of the island?

A. Yes sir, it must have been a caving bank.

Cross Int. 43. Except from the lines you see on the map, you have no information in regard to that whatever, have you?

A. No sir.

Cross Int. 44. The field notes are given on this map, are they not?

A. Yes sir, I believe so.

Cross Int. 45. Now in fact, where it is marked on them—the Mississippi River, you gave the distance further, while that shows that that distance—50 chains, was actually surveyed, don't it?

A. Yes sir.

Cross Int. 46. Then came to the point where they could not cross?

A. They surveyed entire around.

Cross Int. 47. They surveyed entire around entering out to the island?

A. No sir, they surveyed a base line on the upper——

Cross Int. 48. I say they surveyed a base line to the upper end then they surveyed a line east 47.29 chains to the island.

A. Not by actual measurement.

Cross Int. 49. Well, they managed to get there by triangulation or otherwise?

A. Yes sir.

Cross Int. 50. The surveyor meant plainly to show that Island 76 is a part of Arkansas, did he not, as appears from that map?

A. Yes sir, that's what it appears from that map.

Cross Int. 51. Now from the same map, what is the distance from minor *"a"* on the island to the Mississippi shore?

A. That Mississippi shore, there is nothing on the map to show that it is along there, even by estimate of distance, eye
415 measurement—about 38 chains according to this map from the island bank opposite *"a"* minor to the Mississippi shore line as shown on this map.

Cross Int. 52. That is how many feet?

A. 2508 feet.

Cross Int. 53 Nearly a half a mile, is it not?

A. Scant half mile; short two chains of a full half mile.

Cross Int. 54. What is the distance from the foot of the island, as appears from the map, to the Mississippi shore?

A. Forty chains—one half mile.

Cross Int. 55. I notice from that map that the Mississippi River on the east of the island; there is no measurement at all, is there?

A. Nothing to indicate, that the Mississippi bank is along there, by actual measurement, or by triangulation and calculation of the distance.

Cross Int. 56. Then that, your idea is, was a mere eye measurement or a guess?

A. Yes sir.

Cross Int. 57. At the date of this map the main channel might have been on the Mississippi side where there is no measurement at all?

A. No sir.

Cross Int. 58. Is not one half mile broad enough for the main channel of the Mississippi River?

A. The man that made that map shows it on the west side?

Cross Int. 59. I don't see where he shows it on the west side, do you?

A. He shows the river there.

Cross Int. 60. River on the other side is there not?

A. Yes sir.

Cross Int. 61. Well at no consideraable date, is it not possible that that was the main channel, and might have gone down across that chute?

A. I will have to answer you, and wish also to give my
416 reasons—No sir, taking the river as shown by the map it is not.

Cross Int. 62. Now you spoke of a caving bank on the island?

A. Yes sir.

Cross Int. 63. Have you got anything to indicate that except simply the land marks?

A. Nothing except the map before you.

Cross Int. 64. Running a straight line east and west across from the field at the center of section 2 to about the center of section 3 on the main land, what is the distance between that and the Arkansas shore?

A. From the island bank in the field at the center of section 2 township 12 south range 1 east, measured due west across the channel of the Mississippi River to the main land bank of the front of section 3, township 12, south, range 1 east—the measurement taken by scale from the map before me is 97 chains.

Cross Int. 65. There is nothing there at that point to show any actual measurement across there, is there?

A. No sir.

Cross Int. 66. All your testimony in regard to this map then, is based upon the measurements that you have made here tonight, using the scale as laid down on the map, is that so?

A. My testimony with regard to the measurements is based upon scale measurement from shore lines actually run, and connected by locating a base line, and then measured by triangulation and calculation, on the front of section 35, township 11, range 1 east; this line having for its initial point the northeast corner of section 34, as described in my testimony foregoing.

Cross Int. 67. You have not answered my question.

A. I have tried to.

Cross Int. 68. I wish to convey this idea; that while the surveyor made no actual measurements across the channel at that point, while for all practical purposes it was measured in as much as the shore line on each side of the channel of the river at the point which you designated in your answer, was actually located by measurement and connected by a line further up the stream?

417 A. If you take the measurement you will see——

Cross Int. 69. My question is, which you have not answered yet, is whether or not your whole testimony in regard to this map is not taken from the scale laid down on the map, and your measurement from point to point as appears on the map?

A. All my measurements of course are, except those referring to the random line on the bar, and the triangulation work across the river opposite the upper end of the island, west of the island, all the

evidence that I have given with the exception of those measurements have been taken of course, you see, by scale.

Cross Int. 70. And it all appears on the map?

A. It all appears on the map.

Cross Int. 71. That is what I have been trying to get at. Do you know anything about the caving of the shore line on the Mississippi side from 1846 or '21 down to the present time?

A. There has been no caving since '80 or '81 that I have any correct evidence of.

Cross Int. 72. When did you first see that island?

A. I first saw the island—I think it was in 1899.

Cross Int. 73. In your explanation heretofore given in your examination in chief of exhibit C to E. H. Nall's deposition, it being Exhibit to your deposition, state whether or not all your testimony in regard to that map and measurements you made from the map itself, the whole data appears on the map itself is not that so?

A. Yes sir.

Cross Int. 74. If I understood you correctly, you stated as a reason why the Mississippi River could not have gone east of the island, as appears from that map, that the water of the Mississippi River could not have gone through so narrow channel as indicated by that map. In other words, that the point of inflow of the river to that channel being greater than at one point down the channel; that it would cause shoaling or a bar at the head of the channel, and the water could not have passed through so small a space as 8 chains; was that correct?

A. The statement is not exactly I believe what I stated. I stated that the greater width at the upper end, would let more water
418 in than could pass out at the narrow throat; that the current would be slackened at the upper end, therefore the shoaling would take place.

Cross Int. 75. Well, now, where the channel is narrow, in the Mississippi River particularly, is it not a fact that it scours out in the bottom and makes it deeper at the narrow place?

A. Yes sir.

Cross Int. 76. Then that volume of water coming in at the head of the channel and passing through the narrow place would certainly have scoured out the bottom at that shallow place, and made it much deeper, would it not?

A. Yes sir, in sufficient time.

Cross Int. 77. Well, how do you know how much the Mississippi River would scour in the channel, when it is necessary?

A. Well, I have sounded at low water over 40 miles of this river, taking soundings every few hundred feet across the river, and the greatest depth that I can now recollect was in the neighborhood of 130 or 140 feet. That depth must have been exceeded at that point to pass the water that would enter at the upper end of the chute at the head of the island. That depth there was the normal depth of the water, and a width of 29 chains as shown on the plat.

Cross Int. 78. Did you ever make a sounding at that particular place when the channel was at that particular width of 8 chains to see the depth of it?

A. It is not very far from that now, and I have shot ducks in the mud there.

Cross Int. 79. How long since?

A. That was last November—a year ago last November.

Cross Int. 80. My question was, however, whether in 1846 you actually, or not, or had you actually made a sounding to get the depth of that channel?

A. I did not in 1846, but there was a mud bar there in 1901.

Cross Int. 81. You know nothing of the making or get up of this particular map Exhibits C and B, except what appears on the face of it?

419 A. That is all.

Cross Int. 82. I will ask you to look at this map again and see if there is anything on it to indicate that that 8 chains at the narrowest point on the eastern side of the island has ever been actually measured, or was actually measured by the surveyor at the time the map was made.

A. There is no measurement across the bar at that point. There is a measurement shown at the upper end in the actual survey on the Mississippi bank run on the island bank and Mississippi bank.

Cross Int. 83. How do you know that survey was actually made except that shown on the map?

A. It says so.

Cross Int. 84. That is all you know about it?

A. That is all—what the map shows.

Cross Int. 85. You do not know as a matter of fact by actual survey whether these distances are correct or incorrect, do you?

A. No sir.

Cross Int. 86. I call your attention to a copy of a map purporting to have been made by Benjamin Griffin, Deputy Surveyor in January and February, 1830, township 21, range 8 Choctaw District, duly certified by Binger Hermann Commissioner of the General Land Office and Ex-Officio Surveyor General of Mississippi. State whether or not that map does not on its face represent the Mississippi River as east of Island 76.

A. Yes sir.

Cross Int. 87. I will ask you whether or not it does not appear on that map a table of contents giving the field notes of the surveyor of the land adjacent to that island on the Mississippi side running up to the Mississippi River.

A. It gives the contents of the township in acres up to the point you mention—up to the Mississippi River bank, as shown on the plat.

Cross Int. 88. I will ask you to make that plat Exhibit D to your deposition.

420 A. I do at your request.

Cross Int. 89. You have testified to a plat made Exhibit A to your deposition of fractional townships 11 and 12 south of range 1 east of the 5th Principal Meridian, signed by Wm. McKee, Surveyor of Public Lands Illinois, Mississippi and Arkansas, and seems to have been made by Dan Miller, Deputy Surveyor. I will ask you whether or not all you have testified to in regard to that map or plat

was not made and stated from the face of the map itself as it appears.

A. Yes sir.

Cross Int. 90. And all you have testified to in regard to the caving banks and course of the river was drawn from the appearance of this map itself?

A. Yes sir.

Cross Int. 91. I will ask you whether or not on that map or plat does not appear the field notes of the surveyor of the same.

A. No sir, it is just areas of the sections.

Cross Int. 92. That map bears date of January 22nd, 1827, I believe; is that correct?

A. That was the date placed in the surveyor's land office at St. Louis, but the date of the survey is Feb'y 17, 1827, and reads as follows: "Subdivisions and entries of fractional townships 11 and 12 south, range 1 east on the right bank of the Mississippi River and south boundary of township 11 south, range 1 east with surveys at a variation of 7 degrees east in February 1827, by Daniel Miller, Deputy Surveyor under his contract of the 7th day of December, 1826."

Cross Int. 93. You have stated that from the map opposite letter "A" at a point up the river various changes indicated by the bank lines, I will ask you the distance from A to a point Z on the Mississippi shore line opposite the head of Island 76, as appears on said map by the scale laid down thereon?

A. 5¾ miles in a direct line to the point from A to the mark Z on the map.

Cross Int. 94. You have stated from a point on the north-
421 east corner of section 20 on the Arkansas shore that the current deflected to the eastern side of the Mississippi shore, creating a caving bank down as far as letter X as indicated on the map. Now I will ask you whether or not just at letter X there is not another deflection running down to below Z, as marked by you, showing a caving bank there on the Mississippi side?

A. I stated that at or about the northeast corner of section 20, township 11, range 1 east the current was deflected from the right or Arkansas bank and passed over to the Mississippi bank, there creating a caving bank opposite the point D on the Arkansas bank, the Mississippi bank caving as far down as X, the caving following the western face of the bank of the island down. As to the second curve below X down to the letter known as Z, I would say that that could not be a caving bank, caused by the current above for the reason that the curve of the bank above would deflect the current out from the bank at or about X, causing it to go west of the island instead of down past Z.

Cross Int. 95. I will ask you whether or not it does not appear from that, at the letter X there is a little point, perhaps a mud point that stood out and held back the caving at that particular point, and from that point it began immediately, according to the line on the map, to deflect east again still caving until it reached a point below the head of Island 76, and that caving between X and

Z and below Z pushed itself back east around that point nearly to an equal distance of the caving above X.

A. There is certainly a mud point at X, all such points on the Mississippi bank are mud, or mud and gravel—that may have been gravel there. As to same proving what perhaps might have been the condition of the eastern channel, I will say that all the conditions of the bank, as represented by the plat known as Exhibit A to my deposition, indicate that instead of that being the bank line of the river proper at that time, running the Mississippi bank east of the channel and below X down past the point known as Z east of the island, that all the conditions as shown by the plat indicate that the channel was undoubtedly west instead of east of the island.

422 There is nothing in my experience on the river showing that the Mississippi River deviated from natural law, and instead of being deflected from a shore line by a salient point, hugs the shore below that point.

(Foregoing answer excepted to by counsel for complainant as not responsive, and the question repeated.)

Cross Int. 96. Is it not a fact that the shore line on the Mississippi side, as shown by this plat, that is, that from X it began caving or pushed the bank east down to and below the head of the island.

A. The chute bank shows the curve described in the proceeding question, but not the river bank.

Cross Int. 97. What I mean to ask you is whether or not the shore line on the Mississippi side from the point X, don't show that it has caved or receded back from that point from X down to Z and below it? At some time before Island 76 existed?

A. Probably so.

Cross Int. 98. Don't it so show particularly on that map?

A. It shows a concave line there which I called the chute bank.

Cross Int. 99. The line at Z you represented to indicate the shore line on the Mississippi side of the water, did you not?

A. I represented it to be the chute bank, which is also a shore line.

Cross Int. 100. Does it not indicate the water line on the Mississippi side?

A. It indicates a high water line on the Mississippi side, yes sir,

Cross Int. 101. Why do you say continually a high water line?

A. Because I contend that at low water between the head of the island and the point on the main land of the Mississippi shore marked Z, that a bar must have existed at low water.

Cross Int. 102. That is a mere supposition of yours, is it not?

A. That is an inference drawn from the shore lines.

(Complainant excepts to all parts of the foregoing answer, because — does not state a physical fact that existed.)

423 Redirect examination.

By Mr. SCOTT:

Int. 1. Mr. Andrews, I call your attention to the map of Feby. 18th, 1830, of township 21, range 8 west, Choctaw District, filed as exhibit D to your deposition. Please state whether or not island 76 is designated on that map.

A. Island 76 is shown on that map.

Int. 2. How does it appear that Island 76 is drawn in? I mean by this, does it appear that it was drawn by actual survey, or merely sketched in?

A. It appears to have been sketched in.

Int. 3. Is there anything on that map to indicate that any traverse of the Mississippi River was taken at that point, that is, between the main land of township 21 and Island 76?

A. There was a traverse of the bank on the main land taken but nothing to indicate that the banks on the island were traversed.

Int. 4. Is there anything to indicate on that map that the distance in any way across the Mississippi River was taken?

A. No sir.

Int. 5. Is there anything to indicate on that map that the distance across the chute between the main land of Mississippi to the island was taken?

A. No sir.

Int. 6. I hand you certified copies of the field notes of township 21, range 8 west filed as exhibit B to Mr. E. H. Nall's deposition, and being marked "17-F" and 8-B. Please examine same and state whether or not that map conforms to the field notes of township 21, range 8 west.

A. The map conforms to the field notes as shown in Exhibit B to Mr. Nall's deposition and marked 17-F, that is, the map marked Exhibit D to my deposition.

Int. 7. The 17-F however constitutes what?

A. It constitutes the fractions of township 21 north range 8 west on the main land.

Int. 8. Does it, or not, constitute the entire field notes of
424 township 21, range 8 west?

A. No sir.

Int. 9. Then state whether or not the map filed as Exhibit D to your deposition conforms with the field notes of township 21, range 8 west. In case you shall state that it does not conform to the field notes of said township 21, range 8 west, state why not and how it does not conform to the said field notes.

A. It does not conform to the entire lot of field notes of township 21 north, range 8 west in this particular: That it omits all the traverse of Island 76, as shown in Exhibit of Mr. Nall's deposition. No. 8-B; Those field notes, which I have carefully platted, show the traverse of Island 76, showing its connection with the Mississippi surveys. The surveyor made his survey of township 21, range 8 west in January and February of 1830, as shown by Exhibit D to my deposition. He made the survey of township 22 north range 8 west

in October of 1830, or well toward the end of the year. The same surveyor, Daniel Griffin, who surveyed township 21, range 8 west and 22 north range 8 west, made a traverse of Island 76. That traverse is connected at the northern extremity of the island with the bank line of the main land, as shown on Mr. Nall's plat marked Exhibit A to my deposition.

(Complainant excepts to the foregoing answer as incompetent.)

Int. 10. The survey of the field notes marked 17-F were made in January and February of 1830, were they not?

A. Yes sir.

Int. 11. And when were the field notes in 8-B made?

A. They were made in October of 1830.

Int. 12. 8-B is headed: "Field notes of township 22, range 8 west of the Choctaw District of the State of Mississippi," is it not?

A. Yes sir.

Int. 13. How is township 22, range 8 west situate with reference to township 21, range 8 west?

A. Directly north.

425 Int. 14. In obtaining the starting point for Island 76 in the Mississippi River, state how the surveyor connected the island with the main shore, and with which township and range the connection was made.

A. On completion, after he had made the surveys on the mainland, he crossed to the island, and made a traverse of the island, commencing at its upper extremity passing clear around the island, then after he had returned to his starting point at the upper extremity of the island, he passed across the bar, running a line across the bar at the upper end of the chute, and connected his survey by bearing and distance, with the traverse of the mainland in township 22, range 8 west.

Int. 15. Now, Mr. Andrews, state how you believe, from all of the facts before you, consisting of Exhibit B to Mr. Nall's deposition and Exhibit C to your own deposition, and Exhibit D to your own deposition, how the exhibit B happened to be only a partial map of township 21, range 8 west, and Exhibit C the entire map of township 21, range 8 west, and the two maps of the same township happened not to be the same.

A. The first survey was made in January and February, 1830. That is the survey on the main land as shown by Exhibit D to my deposition. There was no attempt at that time to traverse the banks of the island. The survey of township 22, north, range 8 west was made in October, as shown by the notes, of the same year—1830. From the fact that the first survey was made in January and February when the channel of the river was usually full of water, as it is at the present time, I have no doubt that the surveyor deemed the island inaccessible at the time and postponed his work on that portion of the territory until a more favorable season should arrive. When he made the survey in the fall of October, 1830, it was our customary dry season and he had no trouble in crossing what I hold must have been the bar across the chute at the head of the island. His

notes, however, were kept in connection with the survey notes which he had just made for township 22, range 8 west. He had
426 already sent his township plat, as shown in Exhibit D to my deposition, into the office, forgetting that he had failed to make the survey of Island 76. When he came to plot the field notes to make the map of township 22, north, range 8 west, he discovered that he could not sectionize this island as a portion of township 22 north, range 8 west. The field notes show the attempt to do so by those particular sections 6 and 7 of township 22, range 8 west, and he changed that, as shown by the field notes, to sections 36 and 37 of township 21, north, range 8 west. The first plat had already gone in, and correction was made on the plat in the office at Jackson, or wherever he sent his notes. This map to Mr. Nall's deposition is undoubtedly a correct representation of the home office map.

(Complainant excepts to the foregoing answer as incompetent.)

Int. 16. This map marked exhibit to your deposition and C to Mr. Nall's deposition, is a true map of the entire field notes of township 21, range 8 west?

A. I have just platted the field notes of that portion of the township adjacent to the river, and I find that the map as made by Mr. Nall is a correct representation of the same, and is a full representation.

Int. 17. Now, Mr. Andrews, Col. Myers in his cross examination, asked you if there was any measurement shown on Exhibit to your deposition and Exhibit C to Mr. Nall's deposition, of the distance across the chute at the northwest corner of section 4, township 21, range 8 west, where you stated the distance to be 8 chains in your direct examination, to which you answered I believe that there was no direct measurement shown across the chute. State whether or not, however, from locating the scale on the map, you can get the distance across the chute, and whether same is as correct as though measured by chain; and if so how? And why?

A. To all intents and purposes there has been made by the surveyor, the measurement across the chute. He has made surveys on both the main-land and the island banks connected above by means of the line run across the head of the chute. It follows that
427 where the traverse of the bank on the main land, and the traverse of the island bank are connected by course and distance and correctly platted, scale measurements are correct; scale measurements are correct within the limit of platting on the scale here given.

Int. 18. I note from Exhibit D to your deposition that the township of Island 76 is totally different from the township of Island 76 in Exhibit B to your deposition. State how that difference happened to exist, and which is the correct township of the island taken from the field notes thereon.

A. In Exhibit D to my deposition, the island is shown simply as it was sketched in by the surveyor at the time he was making the traverse of the main land bank. Township 21 north, range 8 west, the plat shows under different dimensions to the island in that case.

However, in the plat marked Exhibit to my deposition, the island is shown as it existed; the outline of the island is shown by actual measurement taken on the ground. I want to refer to the chute in this township. It is something that has not been asked me, but it is a point very material. It is this: The fact that the surveyor has marked the Mississippi River as passing east of the island between that and the main land on the plat marked Exhibit D to my deposition. At that time I hold that the channel must have had a large volume of water passing through it. Even an ordinary dry chute would have shown a large body of water passing down it,—the river being at probably the same stage it is now. In that case it would have been practically impossible to determine just the depth and condition of the channel or the chute, and I take it that the surveyor just intended to represent the fact that water was passing down the chute, not that it was the channel of the river.

(Foregoing question excepted to by complainant as incompetent for reasons to be assigned at the hearing.)

Int. 19. Mr. Andrews, I refer you to the map marked Exhibit C to your deposition, and call your attention to the question of Col. Myers relative thereto, as to the distance across the Mississippi River from the field on the island at the center of section 2 township 12, range 1 east, across to section 3, township 12, south, range 1 east, as to whether or not there is a measurement across said river. Please state whether or not from scaling the distance across, as per the map, you can get the correct distance, and if so why and how?

428

A. Certainly you can. You have two points on the bank lines, one on the bank line on the Arkansas main land and one on Island 76. These bank lines were fixed by actual traverse of each. Then the traverses are connected, as you see, by measurements and triangulation across the river opposite the upper portion of Island 76. It follows that on a map, where those field notes have been correctly plotted scale measurements are correct within the limits of plotting to that scale. I mean by that that the amount of error in a scale measurement would be too small to be of any relative importance.

Int. 20. Now examine that map with reference to the entire outline indicating the Mississippi shore line, and state whether or not there is shown on the same an attempt to arrive at the correct distance across the river at any point on the map except the distance across the river from the main land of Arkansas to Island 76.

A. The only evidence of actual measurement from the main land of Arkansas to any other bank is that shown on the plat connecting the main land of Arkansas with Island 76. If the surveyor had made any other measurements, he would have shown them. He has sworn that that plat is an actual representation of the land as shown by the field notes. Therefore, if he had taken any measurements across to the Mississippi main land, he would have shown those measurements on this plat. In absence of such measurements shown on the plat, the conclusion is that he took no such measurements,

but only took the Mississippi bank down by eye measurement and sketched it in.

(Foregoing answer excepted to by complainant as incompetent for reasons to be assigned at the hearing.)

Int. 21. In other words, the line opposite the main land in Arkansas curving around is scaled and signifies the line indicating
429 the river between the two lines.

A. Yes, it is an approximate line and indicated the Mississippi bank of the river.

Int. 22. Put in from the Mississippi?

A. An eye measurement probably sketched in his field book while he was in the field. It is customary with surveyors to make a great many surveys that way.

Int. 23. Referring to the plat marked Exhibit A to your deposition, Mr. Andrews, I call your attention to the question asked by Col. Myers relative to the indentation from the point just below the point X to the point marked Z on said map, to which question you replied that indentation there did not indicate a caving bank; nor indicated the channel bank of the river, but indicated the bank of the chute. Please state what you meant by so stating, and especially with reference to the indentation not indicating a then caving bank with reference to the point Z indicating the chute bank.

A. That chute bank represents an old river bank, a bank that dates back for its formation, back beyond any records that we have, or knowledge of man in this country. It is not a caving bank for this reason. That it is protected from the current of the river by the point of land on the Mississippi bank reaching out in the channel of the river at point X, and on account of the curvature of the Mississippi bank above this point X, the current would be deflected from the bank below which I designated as a chute bank.

Int. 24. Taking then the map as correct as drawn at the date thereof, it would be a physical impossibility for the current to have struck in below X and at the point Z, would it not?

(The foregoing question excepted to as incompetent for reasons to be assigned at the hearing.)

A. Yes sir.

Int. 25. State whether or not there is another conclusive proof from the map that the point Z was not a caving bank with reference to the river below the island and the condition of the banks there.

A. The surveyor in making this plat—it is surveyed for the
430 State of Arkansas—has undoubtedly attempted to represent the Mississippi bank with a degree of accuracy unusual in such surveys. You will observe that he has taken at different points —bearings to locate the Mississippi bank, particularly so above and below the island on the Mississippi bank and on the upper and lower extremities of the island, and he has shown on his plat the curvature of the Mississippi River with the curve in the Mississippi bank above, opposite the point D on the Arkansas bank, down past the point X, and the curvature of the Mississippi bank coincides with the curvature

on the western face of the island, and very well with the curvature below. He also shows from the map that he takes that to be the Mississippi bank in that he takes his location of points on the Mississippi bank down the west face of the island instead of down the Mississippi main land bank.

Int. 26. I will ask you a hypothetical question: Suppose the bank at X was a caving bank, and the current or channel passed down the east side of the island, at the date of this map, what would have been the condition of the Arkansas bank relative to caving below Island 76, and what would have been the condition of the Mississippi bank below the island.

A. The Mississippi bank below the point marked Y would have been convex instead of concave, and the corresponding Arkansas bank would have been concave instead of convex.

Int. 27. So the map shows conclusively by reason of the concavity of the Mississippi bank below the point Y, and the convexity of the Arkansas bank, opposite the point Y, that the current could not have passed down the east side of Island 76?

(Foregoing question excepted to by complainant as incompetent, for reasons to be assigned at the hearing.)

A. That would be hard to say; from the map probably in the early years of the last century, or latter part of the preceding century would be the date of the formation of the bank, but it would be hard to say from that. My testimony with regard to the age of the bend is based on this series of maps, and on the maps I spoke of in my testimony of the 1893 report of the Mississippi River Commis-
431 sion, those maps dating back to 1765, all showing no change from the condition of affairs as shown by this map.

Int. 30. You then are familiar historically, with the condition of the river at that time, independent of the maps introduced here?

A. Yes sir. I have been familiar with it for the past 6 or 7 years.

Int. 31. Part of your business, is it not?

A. It is. Further I take an interest in, a very natural interest in, following up the changes in the banks and channel of the river.

Re-cross examination by Col. D. E. Myers:

Reserving the exceptions, re-crossed by the complainant.

Cross Int. 1. All your testimony this morning on re-direct examination, is based upon the maps exhibited to your deposition and certain field notes entirely, is it not? And your conclusions and deductions therefrom?

A. Yes sir, and the maps mentioned in the 1893 report of the Mississippi River Commission. The maps known as Collet's, Putnam's and Lieutenant Ross's.

Cross Int. 2. Those maps and books are not exhibited with your deposition, are they?

A. No sir. I would like to make them a part of my deposition.

Cross Int. 3. Why are you so particularly desirous of making them a part of your deposition?

A. Well, I have referred to them as substantiating the statements

I have made with reference to this bend, and I would particularly desire that they be introduced for that purpose.

Cross Int. 4. What makes you so particularly desirous to have those introduced to substantiate what you say on this examination?

A. In order that my statements may be borne out. No
432 man likes to state a reason at random, and let a lawyer get up before a court where he is not represented and tear him all to pieces.

Cross Int. 5. You have taken a considerable interest in this island, have you not?

A. I especially take a great deal of interest in all the river and noting its changes. It is my calling in life to live and work along the river.

Cross Int. 6. Now in making your calculations from the maps and field notes that you have testified about in re-direct examination this morning, how long were you engaged in those calculations from what hours and when?

A. I don't know the exact hours I spent, probably an hour and a half in platting out the notes.

Cross Int. 7. Probably an hour and a half in platting and making your calculations?

A. Yes sir; there were no calculations to make, just simply a plain platting of the field notes.

Cross Int. 8. In platting the field notes, you had the original map before you that you have exhibited?

A. Yes sir.

Cross Int. 9. In those field notes you spoke of certain ones as having been prepared and filed in the office of the Secretary of State, or the Auditor's office of Mississippi, by the surveyor himself. Now do you know he made them there, or where he made them, or is not all that mere speculation on your part?

A. Of course, I do not know in what particular locality he made the map, but they were bound to have been filed in the surveyor's office.

Cross Int. 10. Well it is entirely calculation, is it not, probably theory?

A. No sir, it is a requirement of law.

Cross Int. 11. Then your position is that all laws are actually complied with?

A. They are in that particular.

Cross Int. 12. You know that personally to be so in 1830?
433 A. No sir, I was not there, but I know the records show it.

Cross Int. 13. Then down to the fact, it is merely a speculation of yours.

A. There is the sworn statement of both parties concerned on that map.

Cross Int. 14. Then it is a mere speculation that it was done?

A. It is a conclusion from the statement on the face of the maps.

Cross Int. 15. You also gave as a reason why Island 76 was not

traversed at the time the plat—Exhibit D to your deposition, because of the height of the Mississippi River at that time. Now do you know what the stage of the water was in the Mississippi River in January and February of 1830?

A. It is a deduction drawn from the facts in the case as presented by the records.

Cross Int. 16. And merely a speculation on your part?

A. A knowledge of the stage of the river at that time of the year.

Cross Int. 17. Is it not a fact that with many years, the Mississippi River is rather low in January and February?

A. No sir. We generally take our low water discharges in December.

Cross Int. 18. Is it not a fact that it has been known to be low in January and February?

A. I expect so.

Cross Int. 19. Occasionally, sometimes, that all the upper end of the river is frozen up at that season of the year?

A. I expect it is.

Cross Int. 20. And you don't know how it was in January and February, 1830?

A. I don't know; I have no personal knowledge of any low water at that season of the year.

Cross Int. 21. But you don't know how it was in 1830?

A. Of course not.

Cross Int. 22. Isn't it a fact that all you have stated about
434 that is merely a supposition?

A. Is a deduction from the facts presented from the plat and field notes.

Cross Int. 23. And all your deductions are drawn from the field notes and those plats that you have exhibited?

A. Yes sir.

Cross Int. 24. Not from personal knowledge whatever?

A. Not from personal knowledge.

Cross Int. 25. Not from actual survey?

A. Not from actual survey.

Redirect by Mr. A. Y. Scott:

Int. 1. When you referred to a part of your deposition being based upon the maps of the Report of the Mississippi River Commission in 1893, state just what you meant thereby.

A. I referred of course to the period of time during which the channel had existed in approximately the same situation that it is now. That it was shown in these old maps as being approximately where it is shown in the plats exhibited here from the land surveys, before and during a great number of years.

Int. 2. You mean to state that the condition of the channel shown in the maps, etc., filed with your deposition, is practically the same as the condition shown in the ancient maps of the Mississippi River Commission reports?

A. That is what I meant.

(Foregoing question and answer excepted to by counsel for the complainant- as incompetent for reasons to be assigned at the hearing.)

Int. 3. Your testimony as to the channel of the Mississippi River at the dates of those maps exhibited to your deposition is based upon what?

A. Why, it is based upon the maps themselves and the field notes which I have exhibited and platted.

Int. 4. And has no reference whatever to do with the
435 ancient maps of the report of the Mississippi River Commission?

A. No sir, I only spoke of them as corroborative of the evidence introduced by those plats exhibited to my deposition.

Int. 5. I will ask you, Mr. Andrews, to file as Exhibit F to your deposition the map marking the course of the Mississippi River from the Balaise to Fort Chartres, being a map of Lieutenant Ross, 34 Regiment, and bearing date of 1765.

A. I do so.

(Foregoing question and answer excepted to as incompetent for reasons to be assigned at the hearing.)

Int. 6. I will ask you to file as exhibit G to your deposition the map of the Mississippi River from the Balaise to Fort Chartres, being a map by Capt. Phillip Putman bearing date of 1770.

A. I do.

(The foregoing question excepted to as incompetent.)

Int. 7. I will ask you to file as exhibit H to your deposition a map of the course of the Mississippi River from the Missouri to the middle of the Illinois and the mouth of the river.

A. I do.

Int. 8. State whether or not all of these maps are attached to the report of the Mississippi River Commission of 1893, and are found between pages 3708 and 3709.

A. They are attached to the 1893 report, and are found between the pages mentioned.

Witness further re-crossed by counsel for complainant-, Col. D. E. MYERS, as follows:

Cross Int. 1. At what date did you commence your investigation and particular interest as to Island 76? And the sundry maps in relation thereto?

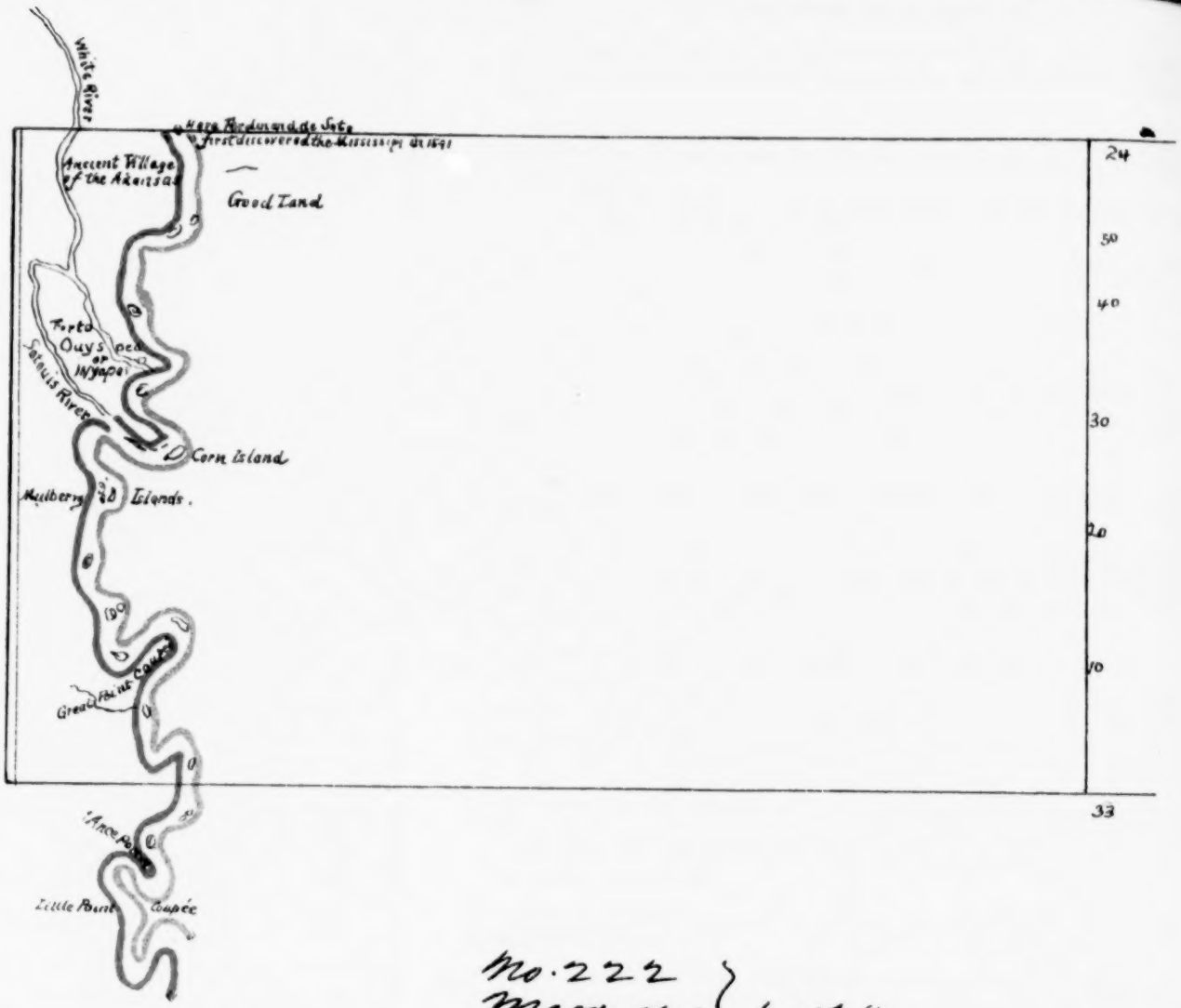
A. I commenced for no particular island or locality. It was about a year ago, I judge, nearly a year ago for that particular island.

Cross Int. 2. Where did you become interested about a year ago as to that particular island?

436 A. I was interviewed at the office in Greenville by Mr. McGuire.

Cross Int. 3. The defendant in this case?

A. Yes he was the defendant in this case.



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} p. 438

Cross Int. 4. All your statements about Island 76, and theories that you have predicated on these maps resulted from that interview.

A. No sir.

Cross Int. 5. Had you commenced your investigations of Island 76 at that date, or after that as special?

A. I made no special investigation of Island 76, as I stated before. I was interested originally by that report, and have during a course of years, never lost a chance to study any old map and make investigations with reference to the old river banks, and the channels and the islands. So far as Island 76 is concerned I must say that I have made no special study, connected with this suit, until called here yesterday evening and this morning.

And further deponent saith not at this sitting.

(Signed) WM. McC. ANDREWS.

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Clerk, by W. Presley Feild, D. C.

For Exhibit A, to this deposition see folio 280 this record.
For Exhibit B, to this deposition *vide* folio 267 this record.
For Exhibit C, to this deposition see folio 281 this record.
For Exhibit D, to this deposition see folio 288 this record.

437 The defendants at the final hearing introduced as evidence the following portion of a map of the course of the Mississippi River from Balise to Fort Chartres taken on the expedition of the Illinois in 1765 by Lieutenant Ross of the 34th Regiment, improved from the survey by the French, which map is attached to the report of the River Commission of 1893.

(Here follows map marked page 438.)

439 To the introduction of which map the complainants at the time excepted.

440 C. H. WEST, a witness on behalf of the defendants, being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Int. 1. State your name, age, residence and occupation.

A. C. H. West, Greenville, Mississippi, civil engineer, 44 years of age.

Int. 2. If you shall answer to the foregoing interrogatory that you are a civil engineer, state how long you have been engaged in your profession.

A. From December, 1883, unto this date.

Int. 3. What is your present employment, and how long have you occupied that position?

A. Chief Engineer of the Mississippi Levee District, from August, 1898, until this date.

Int. 4. State whether or not you have ever been engaged in river and levee work, and, if so, how long, and, in a general way, state your familiarity with regard to same.

A. Yes, I have been so engaged in such work during the greater portion of the time for the past twenty years. I consider that I am familiar with that character of work as it constitutes my profession which I have been for a long time engaged in and am now so engaged.

Int. 5. State whether or not you are acquainted with the Mississippi River and whether or not you have a knowledge of the width of its channel from Cairo to the Gulf, and state how said knowledge was acquired.

A. I am reasonably well acquainted with the Mississippi River, and also have a general acquaintance with the width of said river from Cairo to the Gulf; but I am far better acquainted with it and its width from the mouth of the Arkansas River south. My knowledge of said river is acquired from observation and from study of surveys and charts of the river made by the engineers under direction of the Mississippi River Commission, reports of which I have as records in my office, and which are generally relied on by engineers en-

441 gaged in river improvement and levee work.

Int. 6. If you shall answer that you are acquainted with the width of the channel of the Mississippi River from Cairo to the Gulf, please state the average width of the river over the different reaches, from Cairo to the Gulf as follows:

From Cairo to the Arkansas River
From the Arkansas River to Vicksburg
From Vicksburg to Natchez
From Natchez to Red River
From Red River to Scott's Bluff
From Scott's Bluff to Donaldsonville

giving the width of the channel, first with the river bank full, and second at law water.

A. From Cairo to the mouth of the Arkansas River no accurate surveys have been made of the width of the channel, but the average width from the mouth of the Arkansas River to Vicksburg the bank full stage is 5200 feet, low water 2260 feet;

From Vicksburg to Natchez average width the bank full stage 5328 feet; at low water 2712 feet.

From Natchez to Red River, average width for bank full stage 4800 feet; at low water 2890 feet.

From Red River to Scot Bluff average width bank full stage 3693 feet; at low water 2788 feet;

From Scot Bluff to Donaldsonville average width for full bank stage 3145 feet; at low water 2800 feet.

The sources from which I obtain this information are: for the reach from Arkansas River to Vicksburg, from the Report of the Mississippi River Commission for 1896; the width of the other reaches were obtained from the Report of the Mississippi River Commission for the year 1897. The record of these surveys made under the direction of the Mississippi River Commission, and from which this data was taken are relied on by all of the engineers engaged in the river improvement, whether surveying under the River Commission or acting for the various State Levee Boards.

Int. 7. What is the narrowest point of the channel in each
442 of the reaches above indicated, giving its width in feet.

A. In the reach between the mouth of Arkansas River and Vicksburg, the narrowest width is 1500 feet at low water. From Vicksburg to Natchez the narrowest width at low water is 1200 feet; From Natchez to Red River the narrowest width at low water is 1560 feet. From Red River to Scot Bluff the narrowest width at low water is 2000 feet. From Scot Bluff to Donaldsonville the narrowest width at low water is 2300 feet.

The widths above given in this answer were taken from the records of the Report of the Mississippi River Commission referred to in my answer to Interrogatory No. 6.

Int. 8. Where there is an island in the river, state what is the usual width of the river from the island to the main shore on the channel side with reference to the rest of the river channel.

Ans. Where there is an island the width of the river on the channel side of the island is usually about the same as the width of the channel at other places along the river.

Int. 9. State any other matters and things within your knowledge, material to either party.

A. I don't know of anything else material to the case except what I have already answered.

Cross Interrogatories.

Cross Int. 1. If you answer to Int. 4th in chief that you, as a civil engineer, have been engaged in river and levee work, then we would ask you to state particularly

(*a*) The date at which you were first thus employed, by whom and where, and what were your duties.

(*b*) In like manner, state your next employment in river and levee work—at what point, the date, in what capacity, and when you quit that employment.

(*c*) In like manner, give a history and duration of each employment on river and levee work from the time you speak of, in
443 Paragraph (*b*) of this question, at what point or points, designating the kind of work during each employment, for whom working, up to the present time, giving date of commencement and ending of each job.

Please answer each paragraph fully.

A. (*a*) December 1883 I was first employed by the Mississippi Levee Board as Assistant Engineer in making surveys and in superintending the construction of levees.

(*b*) From November 1892 until August 1898 I was employed by the United States in work under the Mississippi River Commission in the Third District Mississippi River Improvement, as U. S. Inspector and Surveyor, in making surveys and in charge of the construction of levees.

(*c*) From August 1898 to this date I have been Chief Engineer of the Mississippi Levee District which extends from the Southern end of Coahoma County, Mississippi, to a point in Warren County, just above the mouth of the Yazoo River, embracing a river front of 227 miles. This position entails upon me the planning, directing and supervision of all matters pertaining to the construction and maintenance of the levee system over which the Board of Mississippi Levee Commissioners have jurisdiction, to-wit: the 227 miles of river front above mentioned; it also brings me into frequent consultation with the officers of the Engineer Corps of the United States in charge of the River Improvement, and the Mississippi River Commission.

Cross Int. 2. If in answer to Int. 5 and 6 in chief, you undertake to give the average width of the channel of the Mississippi River from Cairo to the Gulf, and the various reaches mentioned in Int. 6, then please state whether or not your supposed knowledge of the average width of the river channel was derived from actual surveys or soundings made by you in person, or from public statements and maps, or from any other source than your own *personal knowledge*.

A. This cross interrogatory has been fully answered by me
444 in my answers to direct interrogatories No. 5 and No. 6 wherein is given the source of my information on the subject on which I was there interrogated.

Cross Int. 3. If you undertake to give the average width of the channel of the Mississippi River from Cairo to the mouth of the Arkansas River, please state the width of the river in April, 1897, at the following points, to-wit: Memphis, mouth of Arkansas River and opposite Island 76.

A. I do not know, as I have not before me the necessary data to answer the same.

Cross Int. 4. And if, in further answer to Int. 6 in chief, you attempt to give the narrowest point in the channel of the Mississippi River in the different reaches from Cairo to the Gulf, please state if you knew the width of the channel at Island 76 in 1818, 1829,

1830, 1840, 1850, 1854, 1860, 1870, 1875 and 1878? Answer this from actual knowledge.

A. I do not.

Cross Int. 5. If you ever in person made a survey of the channel of the Mississippi River at Island 76, please give the date of same, and for whom made, and under what circumstances you made that survey.

A. I have never made such a survey in person.

Cross Int. 6. If, in answer to Int. 8 in chief, where there is an island in the Mississippi River, you undertake to give "the usual width of the river from the main shore on the channel side with reference to the rest of the river channel," please state whether or not you spoke from actual knowledge, and actual measurement and survey in person of all the islands in the Mississippi River from Cairo to the Gulf.

A. I did not, but from a study of the charts and from a general observation of the river.

Cross Int. 7. Is it not a fact that the Mississippi River is rather an eccentric stream—often changing its channel from one side of the river to the other, often from one side of an island to the other side, frequently making cut-offs, and widening the channel at one point and on one side of an island; in other words, widening the channel at one point, scouring it out and deepening it at another, frequently changing the channel and running through chutes instead of the old river bed?

445

A. It is a fact that the River Mississippi is an eccentric stream and often changes its channel from one side of the river to the other; perhaps occasionally may change from one side of an island to another; it occasionally makes cut offs and does widen its channel at one point and on one side on an island. It does widen the channel at one point and at another deepens the channel, but seldom, if ever, does it return to the old river beds.

Cross Int. 8. Is it not a fact that there are frequently deep and heavy deposits made on an island in the Mississippi River in a single year?

A. Yes it is.

Cross Int. 9. Who appointed you to your present position?

A. I was elected to my present position by the Board of Mississippi Levee Commissioners.

Cross Int. 10. If, in answer to Int. 9 in chief, you make any further statement of facts other than theretofore testified to, please designate what part of such additional statement is on actual personal knowledge, and what part from hearsay, or information from others, or from what you have read or heard.

A. I made no answer to direct interrogatory No. 9 and consequently need make none to cross interrogatory No. 10.

(Signed) C. H. WEST.

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Clerk, by W. Presley Feild, D. C.

446 UNITED STATES OF AMERICA,
WAR DEPARTMENT,
WASHINGTON, *June 3rd*, 1902.

I hereby certify that the sheets hereto attached are true copies of the originals on file in the office of the Chief of Engineers, U. S. Army.

(Signed) G. L. GILLESPIE,
Brig. Gen., Chief of Engineers, U. S. Army.

Be it known that G. L. Gillespie, who signed the foregoing certificate, is the Chief of Engineers, United States Army, and that to his attestation as such full faith and credit are given and ought to be given.

In witness whereof I have hereunto set my hand, and caused the seal of the war department to be affixed on this 3rd day of June, one thousand nine hundred and two.

[SEAL.] (Signed) WM. CARY SANGER,
Acting Secretary of War.

447 U. S. 126
RECONNOISSANCE
of the
MISSISSIPPI
and
OHIO RIVERS
1821

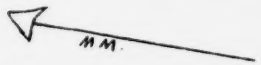
Ohio River from Louisville to its mouth.....in 20 Sheets.
Mississippi River from St. Louis to New Orleans.....in 45 Do.

126.

(Here follow maps marked pp. 448, 449 and 450.)

Table of Conventional Signs

used throughout this Reconnoissance of the Mississippi and Ohio Rivers



Magnetic Meridian

Island with growth of heavy timber

Island with growth of willows + subject to annual inundations.

Dry Sand Bar.

Rocks out of water

Rocks under water

Snags, Sawyers, Planters.

Line of shallow water

Direction of the current

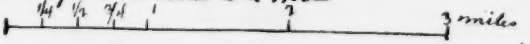
Farmhouses. Plantations

Line of the Channel

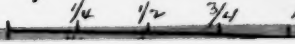
FOLD OUT IS TOO LARGE TO BE FILMED

Scales

Scale of the lengths one inch to a mile



Scale of the breadths, two inches to one mile



451 K. E. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 9, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed document, being an extract copy of Mississippi Swamp Land List No. 1, Grenada series, approved September 24, 1852, is, in so far as it relates to sections thirty-six and thirty-seven, Township twenty-one North of Range eight West, a true and literal exemplification of the original list in this office.

In testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[SEAL] (Signed) BINGER HERMANN,
Commissioner of General Land Office.

No. 1.

List of Lands selected for the State of Mississippi under the Act of Congress approved the 28th of September, 1850, as Swamp and Overflowed lands, in the Grenada District, viz:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *September* 24, 1852.

The Selections embraced in the within list are hereby approved to the State of Mississippi under the Act of 28th September 1850, subject to any legal rights which may exist thereto.

ALEX. H. H. STUART, *Secretary.*

452 Swamp Lands.

Parts of sections.	Section.	Township.	Range.	Surveyed area.		Unsurveyed area.		Total area.	
				Acres.	H'dths.	Acres.	H'dths.	Acres.	H'dths.
E. ½ of N. W. ¼.....	1	20	1 E.	77	66	..	Pat.	No. 1	

An Additional List of Swamp and Overflowed Lands Selected for the State of Mississippi, under the Act of 28th September, 1850, in the Grenada Land District.

The whole of.....		5	20 N.	2 W.	603	00 A	m't	Pat. over	No. 1 253252	64
	* *			*			*		*	
These two tracts are suspended by direction of the Commissioner and not included in the patent.	The whole of.	36	21	8	674	20				
	" .	37	"	"	234	38	....	....	1138	58
	* *			*			*		*	
Total.....		....	.....	.....	....	....	....	....	710692	72
								Corrected total.	710782	04
								See T. 21 R. 8 W.....	908	58
									709873	46
								Deduct See T. 20, R. 9 W.....	332	05
								True total..	709541	41
								Deduct See letter of Jan. 24/55 to Gov.....	479	43
									709061	98

Patent No. 2 includes all the lands in No. 1 of this list, and is dated March 30th 1853, containing an area of 192,189 25/100 acres, and is recorded in Vol. 1 pages 22 to 31, inclusive, and was transmitted to Gov. of Miss. with Com'r's letter dated April 8th 1853.

P. DAGGY, *Cl'k.*

DISTRICT OF COLUMBIA, *City of Washington, ss:*

Before me Henry R. Day a Justice of the Peace within and for said City personally came John Rayburn, a respectable citizen of the State of Mississippi, and being by me duly sworn deposes and says on his oath, that he is well acquainted with all the tracts of land embraced in the foregoing list, and additional list, that he understands and has examined the lines of the greater portion
453 thereof, and that the greater part of every forty acre tract contained in said list are subject to overflow, and inundation and has been commonly so subject, for a number of years past, during the seeding, growing or harvesting season so as to destroy or injure a crop, and therefore unfit for cultivation, without artificial drainage or embankment; and such of said tracts as are not subject to overflow are low, wet, swampy and marshy and are unfit for cultivation from that cause; and that he verily believes that the whole of said lands enure to the State of Mississippi, under the Act of 28th September 1850, as Swamp and Overflowed Lands, except such as may be rightfully claimed or held by private individuals, and further saith not.

(Signed) JOHN RAYBURN.

Subscribed and sworn to before me this 12th day of June, A. D. 1852.

(Signed) HENRY R. DAY, [SEAL.]
Justice of the Peace.

CITY OF WASHINGTON, D. C., *June 12th*, 1852.

We the undersigned citizens, and delegation in Congress from the State of Mississippi, do hereby certify that we are personally acquainted with General John Rayburn, who executed the foregoing affidavit, and from our knowledge of his former occupation in connection with the public lands in the State of Mississippi, we have no hesitation in saying that he is well acquainted with the character of said land; and that we know him to be a gentleman of undoubted character for truth and veracity.

(Signed) S. ADAMS, *U. S. S.*
B. D. NABERS.
J. THOMPSON.
W. BROOK.

GENERAL LAND OFFICE, *September 23d*, 1852.

Respectfully submitted for approval.

JOHN WILSON, *Commissioner.*

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Clerk.

Book.	Page.	Grantor.	Grantee.	Division of section.	Instrument.	Date signed.			Date filed.		
						Day.	Month.	Year.	Day.	Month.	Year.
O. E.	149	State of Miss.....	W. G. Ford	The whole.....	Patent....	9	Jan'y	1854			
F	199	J. J. Ross.....	Clark & Stark	All.....	T. Deed..	9	Jan'y	1857	26	Jan'y	1857
X X	25	State.....	J. T. Currie *et al*.....	All.....	Deed.....	28	Sept.	1891	2	Nov.	1891
Y Y	60	J. T. Williams...	J. T. Currie *et al*.. ..	All.....	"	"	Jan'y	1892	8	Feb'y	1892
"	458	M. B. Hull *et ux*.	F. E. Larkin, Trust...	All	D. T.....	"	March.	1892	29	March.	"
B-10	41	State Miss.....	Elizabeth S. Woods..	Lot 4 & N² Lot 5.	Patent....	10	Aug.	1869	12	Aug.	1899
"	42	Same	Malvina May Scott...	" 6 & S² Lot 5...	"	"	"	"	"	"	"
"	44	Same.....	E. M. Scott.....	" 7 & N² " 8.....	"	"	"	"	"	"	"
"	46	Same....	W. A. Yerger...	" 1 & N² " 2.....	"	"	"	"	"	"	"
"	47	Same.....	E. H. Woods	" 3 & S² " 2.....	"	"	"	"	"	"	"
"	43	Same.....	W. H. Fitzgerald.....	S² Lot 8	"	"	"	"	"	"	"
D-3	364	N. B. Hull.....	R. J. McGuire	All.....	Deed. ...	26	Aug.	"	13	Sept.	"
D-3	364	J. T. Currie	R. J. McGuire	All	Deed.....	.....	Sept.	"	13	"	"
D-4	319	R. J. McGuire ...	W. H. Fitzgerald *et al*.	Lots 1, 2, 3, 4, 5, 6, 7 & 8.	Deed.....	12	Oct.	"	16	Oct.	"
D-3	412	E. H. Woods *et al*..	Same.....	" 1, 2, 3, 4, 5, 6, 7 & 8.	"	12	"	"	20	"	"

THE STATE OF MISSISSIPPI, *County of Bolivar:*

I, L. E. Edwards, clerk of the Chancery Court in and for said County and State, and having in keeping in my said office the land records of said County, hereby certify that the above is a true, perfect and complete copy of the book in my office known as "Abstract of Title Book" Nos. 1 and 3, in so far as the same relate to Section 36, Township 21, Range 8 West.

Given under my hand and official seal at my office in the town of Rosedale, Miss., this the 8th day of November, A. D. 1905.

[L. S.]

L. E. EDWARDS, *Chancery Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, Percy Bell, Judge of the Chancery Court of said County, being the sole Presiding Judge of the Chancery Court of said County, do certify that L. E. Edwards whose genuine name and signature appears to the annexed and foregoing certificate and attestation, was at the date thereof, and now is the clerk of said Court, duly elected and qualified, and his said certificate and attestation are in the form of law, and by the proper officer, and that the seal hereto attached, is the seal of said Chancery Court and that said court is a court of record.

Given under my hand and seal, at Greenville, Miss., in 7th Ch'c'y Dis't this 11th day of November, A. D. 1905.

L. E. EDWARDS. [SEAL.]

PERCY BELL, *Chancellor.*

[L. S.]

Endorsed: Filed Dec'r 20, 1905. W. P. Feild, clerk.

Section 37, Township 21, Range 8 West.

Book.	Page.	Grantor.	Grantee.	Division of section.	Instrument.	Date signed.			Date filed.		
						Day.	Month.	Year.	Day.	Month.	Year.
O. E.	149	State of Miss....	W. G. Ford.....	The Whole	Patent...	9	Jan.	1854			
X. X.	24	State	J. T. Currie *et al*.	All fractional	Deed	26	Oct.	1891	2	Nov.	1891
Y. Y.	60	J. T. Williams...	" " "	All..	"	28	Jan.	1892	8	Feb.	1892
Y. Y.	458	N. B. Hull *et al*...	F. E. Larkin, Trustee.	All.....	D. T.....	28	M'ch	1892	29	M'ch	1892
B-10	45	State of Miss.....	M. Y. Scott.....	Lots 1 & 3.....	Patent...	10	Aug.	1899	12	Aug.	1899
B-10	43	Same.....	W. H. Fitzgerald.....	Lot 2.....	Patent...	10	Aug.	1899	12	Aug.	1899
D-3	364	N. B. Hull.....	R. J. McGuire	All.....	Deed	26	Aug.	1899	13	Sept.	1899
D-3	364	J. T. Currie.....	R. J. McGuire	All..	Deed	.....	Sept.	1899	13	Sept.	1899
D-4	319	R. J. McGuire ...	W. H. Fitzgerald *et al*.	Lots 1, 2 & 3.....	Deed	12	Oct.	1899	16	Oct.	1899
D-3	412	E. H. Woods *et al*.	Same	Lots 1, 2 & 3.....	Deed	12	Oct.	1899	20	Oct.	1899

STATE OF MISSISSIPPI, *County of Bolivar:*

I, L. E. Edwards, Clerk of the Chancery Court in and for said County and State hereby certify that the above is a true, perfect and complete copy of the book in my office known as "Abstract of Title Book" Nos. 1 and 3, in so far as the same relate to Section 37, Township 21, Range 8 West.

Given under my hand and seal at my office in the Town of Rosedale, Miss., this the 8th day of November, A. D. 1895.

[SEAL.] (Signed) L. E. EDWARDS,
Chancery Clerk.

STATE OF MISSISSIPPI, *County of Bolivar, ss:*

I, Percy Bell, Judge of the Chancery Court of said county, being the sole presiding Judge of the Chancery Court of said County, do certify that L. E. Edwards whose genuine signature appears to the annexed and foregoing certificate and attestation, was at the date thereof, and is now the Clerk of said court, duly elected and qualified, and his certificate and attestation is in due form of Law and by the proper officer, and that the seal hereto attached is the seal of said Chancery Court and that the said court is a court of record.

Given under my hand and seal, at Greenville, Miss., 7th Ch'c'y Dis't, this 11 day of Nov. A. D. 1905.

(Signed) L. E. EDWARDS. [SEAL.]
[SEAL.] PERCY BELL, *Chancellor.*

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Cl'k.

456 *Trust Deed.*

J. J. Ross, Chas. Clark & P. B. Stark.

This Indenture made and entered into this the ninth day of January in the year of our Lord one thousand eight hundred and fifty seven, between J. J. Ross of the County of Bolivar, state of Mississippi, of the first part, and Charles Clark and Peter B. Stark of the same County and State of the second part: Witnesseth: That the parties of the first part for the consideration hereinafter mentioned as well as in consideration of the sum of five dollars, to them in hand paid, the receipt of which is hereby acknowledged, have given, granted, bargained, sold, aliened, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, convey and confirm to the parties of the second part the following described lots or parcels of land lying and being in the County of Bolivar, State of Mississippi, to-wit:

Section 36, township 21, Range 8. Section 31, township 21, Range 7, Section 6, township 21, Range 7, having been conveyed to the said J. J. Ross by the State of Mississippi, and by — Smith of Sweetwater, Alabama, together with the following named eighteen slaves: Samuel aged 19 years, Abraham, aged 18 years, Hiram, aged 19 years, Edmond, aged 19 years, George, aged 15 years, William, aged 15 years, Martha, aged 14 years, Homer, aged 16 years, Rueben, aged 15 years, Caroline, aged 16 years, Catey, aged 17 years, Sandy, aged 25 years, Abraham, aged 24 years, Calvin, aged 20 years, Malinda, aged 21 years, Lucy, aged 23 years, Philis, aged 11 years, Alex, aged 20 years.

To have and to hold the said sections of land with all the improvements thereon and the said slaves to them the said parties of the second part, as joint tenants, and not as tenants in common. In trust, however, for the following purposes and none other, that is to say, said J. J. Ross being indebted to Fellows & Company of the city of New Orleans, La., in the sum of Seventeen Thousand One Hundred and thirty dollars and Twenty Cents, as evidenced by his two promissory notes dated January 9th, A. D. 1857 for Eighty Five Hundred and Sixty Five Dollars and Ten Cents, each falling due eleven and twelve months from date thereof, and bearing ten per cent. per annum interest from maturity, to final payment. It is the true intent and meaning of these presents that the said trusee, or the survivor of them shall at the request of the said Fellows &
457 Co. at any time after the maturity of said note or either or any of them, if the money intended to be secured it with the interest shall remain due and unpaid, proceed to sell said property at public auction, or so much or such parts thereof as may be required to be sold for the payment of the sum or sums that may, as aforesaid, remain in arrears, they, the said trustees or the survivor of them, having first given thirty days notice of the time and place of sale, either by advertisement in some newspaper published in Bolivar County, or posted at the door of the Court House of the said County, and out of the proceeds of any sale that may be made the expenses

of executing this trust are first to be deducted and paid, and on further trust that they the said trustees or the *the* survivor of them shall when all the notes with interest are fully paid re-convey to said J. J. Ross the above described property, or such parts of it as may remain unsold.

In witness of all of which the party of the first part has hereunto set his hand and affixed his seal the day and year above written.

J. J. ROSS. [SEAL.]

STATE OF LOUISIANA, *City of New Orleans:*

Personally appeared before me Daniel J. Recardo, a commissioner in and for the State of Louisiana, duly commissioned and authorized by the Governor of the State of Mississippi, the above named J. J. Ross, to me well known to — the individual named in and who executed the foregoing instrument of writing, and acknowledged that he had executed same for the uses, purposes and considerations therein contained and set forth.

In testimony whereof I, the said Commissioner, have hereunto set my hand and affixed my official seal at New Orleans, the ninth day of January A. D., 1857.

D. J. RECARDO, [SEAL.]
Commissioner for Mississippi.

STATE OF MISSISSIPPI, *Bolivar County:*

I, Isaac S. Robinson, Clerk of the Probate Court in and for said County, do hereby certify that the foregoing deed was filed in my office for record January 26th, 1857 and that the same has been duly recorded in Deed Book "F" pages 199, 200 & 201.

Given under my hand and the seal of the said Court at office, this 27th day of January, A. D. 1857.

[SEAL.] I. S. ROBINSON, *Clk,*
By WM. W. ROBINSON, *D. C.*

458 THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for the said County and State, and *Ex-Officio* Recorder of deeds, and having in my official keeping as such the records of deeds of said County, do hereby certify that the above and foregoing three (3) pages contain a full true, complete and correct copy of a deed of trust which is of record in my said office in Deed Record Book "F" page 199 *et seq.*

Given under my hand and official seal of office this the 11th day of December, A. D. 1905.

L. E. EDWARDS, *Clerk,*
By R. B. JOHNSON, *D. C.*

THE STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, Percy Bell, Judge of the Chancery Court of said County, being the sole Presiding Judge of the Chancery Court of said County, do certify that L. E. Edwards whose genuine name and signature ap-

pears to the annexed and foregoing certificate and attestation was at the date thereof, and now is the Clerk of said Court, duly elected and qualified and his said certificate and attestation are in due form of law, and by the proper officer, and that the seal hereto attached, is the seal of said Chancery Court, and that said Court is the Court of Record.

Given under my hand and seal, at Indianola, Miss., this — day of December A. D. 1905.

L. E. EDWARDS, [SEAL.]
PERCY BELL, *Chancellor.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, the undersigned, Clerk of the Chancery Court of the County of Bolivar, in said State (said Court being a Court of record, and having an official seal), do hereby certify that Percy Bell whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the sole presiding Chancellor of the 7th Chancery Court District of said State, which said District in-
459 cludes the said Bolivar; and that said Percy Bell as aforesaid, i*n* now, and was at the date of said attestation, duly commissioned and qualified.

Given under my hand and seal of office, at Rosedale, Miss. this the 14th day of Dec., A. D. 1905.

L. E. EDWARDS, *Clerk.*

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

460 THE STATE OF MISSISSIPPI:

This indenture made and entered — on this the 28th day of September, A. D. 1891, between the State of Mississippi, o*n* the first part, and J. T. Currie and M. A. Hall of the second part, witnesseth: That whereas there was sold on the 6th day of March, A. D. 1882 to the State of Mississippi for taxes due the State the following tract of land, to-wit:

Division of section.	Section.	Township.	Range.	Acres.
All.....	36	21	8 W.	824

situated in Bolivar County, containing eight hundred and twenty-four acres, more or less. And whereas the party of the second part desired to purchase the tract under the provision of the laws of Mississippi, in such cases provided and has this day applied to purchase the said land and paid the sum of one hundred and fifty-four dollars and six cents. And in consideration of the premises, and the amount paid to the State of Mississippi, — in accordance with the Statutes of the State of Mississippi has this day bargained, sold and co-veyed, and by these presents do- bargain, sell and convey unto the said party of the second part, their heirs and assigns forever, the aforesaid tract of land above described, to have and to hold the same to the said party of the second part, their heirs and assigns forever.

The State of Mississippi hereby warrants the title to the said lands according to the Statute in such case made and provided and not otherwise.

In testimony whereof these presents are signed, sealed and delivered in the name of the State of Mississippi by W. W. Stone Auditor of Public Accounts, who has hereunto subscribed his name and affixed his seal of office this the 28th day of September, A. D. 1891.

[SEAL.] W. W. STONE,
Auditor of Public Accounts.

Filed For Record Nov. 2nd, 1891, at 1:40 o'clock P. M. and truly recorded Nov. 2nd, 1891.

T. P. McGUIRE, *Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for said County do hereby certify that the foregoing one page contains a whole, true and correct copy of a certain deed given by the
461 State of Mississippi to J. T. Currie and M. A. Hall as the same appears on pages twenty-five and twenty-six of Book XX of the Records of Deeds in my office.

Witness my hand and official seal this the 13th day of October, A. D. 1903.

[SEAL.] (Signed) L. E. EDWARDS, *Clerk.*
By P. N. McGAUGHEY, *D. C.*

STATE OF MISSISSIPPI, —— *County:*

I, Cary C. Moody, sole presiding Chancellor of the Seventh Chancery Court District of the State of Mississippi (said District including the County of Bolivar) do hereby certify that L. E. Edwards whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the Clerk of the said Chancery Court of the County of Bolivar in said State, duly elected, qualified, and that said attestation is in due form.

Witness my signature at Indianola, Mississippi, this the 16th day of October, A. D. 1903.

(Signed) CARY C. MOODY,
Chancellor.

STATE OF MISSISSIPPI, *Bolivar County:*

I, the undersigned Clerk of the Chancery Court of the County of Bolivar in said State, (said Court being a Court of Record and having an official seal), do hereby certify that Cary C. Moody, whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the sole presiding Chancellor of the Seventh Chancery Court District of said State, which said District includes the said County of Bolivar, and that the said Cary C. Moody, as aforesaid, is now and was at the date of said attestation, duly commissioned and qualified.

Given under my hand and seal of office at Rosedale Mississippi, this the 17th day of ——, 1903.

[SEAL.] (Signed) L. E. EDWARDS, *Clerk.*
By P. N. McGAUGHEY, *D. C.*

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

462 *Deed.*

J. T. Williams
to
J. T. Currie & M. A. Hull.

In consideration of One Hundred Dollars cash in hand paid me by J. T. Currie and M. A. Hull, receipt of which is hereby acknowledged, I, by these presents do release and quit claim to said J. T. Currie and M. A. Hull all my right title and interest in and to the following described land to-wit:

All of Sections Thirty-six (36), and Thirty-seven (37), Township Twenty-one (21) Range Eight (8) West, situated in the County of Bolivar and the State of Mississippi.

Witness my signature the 28th day of January, A. D. 1892.

JAMES T. WILLIAMS.

STATE OF MISSISSIPPI, *County of Washington:*

Personally appeared before me, a Notary Public for the City of Greenville, the within named J. T. Williams, who acknowledged that he signed and delivered the fore-going deed on the day and year therein mentioned.

Given — my hand and official seal this 28th day of January, 1892.

[SEAL.] J. H. ROBB,
Notary Public.

Filed for record Feby. 8th, 1892, at 12 o'clock and 42 minutes, P. M., and truly recorded March 1st, 1892.

T. R. McGUIRE, *Clk.*
—— ——, *D. C.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for the said county and state, do hereby certify that the fore-going is a true and correct copy of a deed which is of record in my office in Deed Record Book "Y-Y", page 60, as full and complete as the same appears therein.

Given under my hand and official seal, at my office in the town of Rosedale, this the 11th day of December, A. D. 1905.

L. E. EDWARDS, *Clerk,*
By R. B. JOHNSON, *D. C.*

463 THE STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, Percy Bell Judge of the Chancery Court of said County, being the sole Presiding Judge of the Chancery Court of said County, do certify that L. E. Edwards whose genuine name and signature appears to the annexed and foregoing certificate and attestation, was at the date thereof, and now is the Clerk of the said Court, duly elected and qualified, and his said certificate and attestation are in due form of law, and by the proper officer, and that the seal hereto attached, is the seal of said Chancery Court, and that said Court is a Court of Record.

Given under my hand and seal, at Indianola, Miss. this — day of December A. D. 1905.

L. E. EDWARDS. [SEAL.]
PERCY BELL, *Chancellor.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, the undersigned, Clerk of the Chancery Court of the County of Bolivar in said State (said Court being a Court of record, and having an official seal), do hereby certify that Percy Bell, whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the sole presiding Chancellor of the 7th Chancery Court District of said State, which said District includes the said County of Bolivar; and that said Percy Bell as aforesaid, i*n* now, and was at the date of said attestation, duly commissioned and qualified.

Given under my hand and seal of office, at Rosedale, Miss. this the 14th day of December, A. D. 1905.

L. E. EDWARDS, *Clerk.*

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

464 STATE OF MISSISSIPPI, *Bolivar County:*

Whereas, it appears to the Board of Spervis*ions* of said County that Sections 36 and 37 in Township 21, Range 8 West, have by error been omitted from the assessment rolls of said County, and by this means have escaped assessment. It is now ordered that the said lands be placed upon said roll, and this having been done, and the Sheriff having assessed same at one dollar per acre for the fiscal year 1881, his action in this regard is now confirmed, and if the taxes are not paid thereon for said year he is ordered to sell said land when he sells other delinquent lands for said year, and to sell same in the same manner as such other lands are sold. The said Sections 36 and 37 are outside of and unprotected by the levee and are not subject to levee taxes.

Ordered this the 12th day of December, 1881.

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court and *Ex-officio* Clerk of the Board of Supervisors in and for said County and State, do hereby certify that the above and foregoing transcript is a true and

correct copy of an order passed by the said Board of Supervisors, and entered at their December Term, 1881 on the 12th day of December, A. D. 1881, as fully and completely as the same appears of record in my office, in Board of Supervisors Minute "D," on page 216.

Given under my hand and seal of said Board and said Chancery Court at my office in the town of Rosedale, Miss., this the 7th of November, A. D. 1905.

L. EDWARDS, *Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, Percy Bell Judge of the Chancery Court of said County, being the sole Presiding Judge of the Chancery Court of said County, do certify that L. E. Edwards whose genuine name and signature appears to the annexed and foregoing certificate and attestation, was at the date thereof, and now is the Clerk of said Court, duly elected and qualified, and his said certificate and attestation are in due form of law, and by the proper officer, and that the seal hereto attached, is the seal of said Chancery Court, and that said Court is a Court of Record.

465 Given under my hand and seal, at Greenville, Miss. in the 7th Chancery District this 10th day of November, A. D. 1905.

L. E. EDWARDS. [SEAL.]
PERCY BELL, *Chancellor.*

Filed Dec. 20th 1905.
W. P. FEILD, *Clerk.*

466 And on February 23rd, 1906, the following proceedings were had, to-wit:

1304.

MOORE & MCFERREN
vs.
R. J. MCGUIRE ET AL.

Come the Complainants by Rose, Hemingway & Rose and Myers & Banks, Esqs., their Solicitors, and file herein their Assignment of Errors and Prayer for Appeal from the decree rendered in this cause to the Supreme Court of the United States, which prayer for appeal is allowed and said appeal is granted upon Complainants filing a bond therefor in the sum of five hundred dollars; thereupon came said Complainants by their said Solicitors and file herein their appeal bond in the sum of five hundred dollars which is examined and approved by the Judge of this Court.

467 Which petition for appeal and assignment of errors are as follows:

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

WILLIAM*d* MOORE and J. S. MCFERRIN, Suing as Partners, Doing Business under the Firm Name of Moore and McFerrin,

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come said plaintiffs by D. E. Myers and U. M. Rose, their solicitors, and *pary* an appeal to the Supreme Court of the United States from the final decree rendered in this cause during the present Term of this Court and present the following

Assignment of Errors.

1. The Court erred in holding that the Western channel of the Mississippi River formed at Island 76 the Western line of the State of Mississippi at the time of the admission of that State into the Union.

2. The Court erred in holding that the letter of Major Downing referred to in the opinion of the Court was admissible in evidence. Also in holding the letter of Jacob Thompson to be admissible.

3. The Court erred in holding that the lands in controversy are not a portion of the territory of Arkansas.

4. The Court erred in holding that the defence in this cause was not precluded by acquiescence and laches.

5. The Court erred in holding that the possession of said lands by the plaintiff was desultory and not permanent.

6. The Court erred in holding that the said lands are or ever were, in the County of Bolivar in the State of Mississippi.

7. The Court erred in holding that the said lands were ever at any time subject to taxation in the State of Mississippi.

468 8. The Court erred in holding that the decision of the special tribunal created in the State of Mississippi for the purpose of cancelling sales of lands for taxes not due, consisting of the Governor, Attorney General and the Auditor of Public Accounts, is not final and perpetually conclusive until reversed or set aside by some direct proceeding, and that the judgment rendered by said tribunal does nor preclude the defense pleaded in this cause.

9. The Court erred in not granting the prayer contained in the original and amended bills in this cause.

10. The Court erred in dismissing the suit for want of jurisdiction.

Appeal granted returnable in thirty days and upon execution of a bond in the penal sum of Five Hundred Dollars ($500.00) conditioned as required by law, the appeal to act as a supersedæs.

(Signed) JACOB TRIEBER, *Judge.*

Endorsed: Filed February 23rd, 1906. W. P. Feild, Clerk.

469 Which Appeal bond is in words and figures following, to-wit:

In the United States Circuit Court for the Eastern District of Arkansas, Western Division.

WILLIAM MOORE and J. S. MCFERREN, Suing as Partners Doing Business under the Firm Name of Moore & McFerren.

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. T. SCOTT, M. M. SCOTT, W. A. YERGER, W. A. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON,

Know all men by these presents: That we the above named plaintiffs, William Moore and J. S. McFerren, as principals and Dale Wallace and J. S. Catherwood as sureties, are held and firmly bound unto the above named defendants, R. J. McGuire, E. H. Woods, E. S. Woods, M. T. Scott, M. M. Scott, M. A. Yerger, W. A. Fitzgerald, C. L. Jones, Jr., and Hubert B. Wilson, in the sum of Five Hundred Dollars to be paid to them, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this January twenty-second, 1906.

Whereas the above named plaintiffs have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled case by the said Court,

Now, Therefore, the condition of this obligation is such that if the above bound principals shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void, else to remain in full force and virtue.

WILLIAM MOORE. [SEAL.]
JACOB S. McFERREN. [SEAL.]
DALE WALLACE. [SEAL.]
JAMES S. CATHERWOOD. [SEAL.]

STATE OF ILLINOIS, *County of Vermilion:*

470 On this day came before me a Notary Public in and for said County and State the above named sureties Dale Wallace and J. S. Catherwood, who, being duly sworn, each severally made oath that after payment of all debts, and setting aside property exempt from exemption, he is worth more than the sum of one thousand dollars.

Sworn to and subscribed before me.

Witness my hand and official seal this 25th day of January, 1906.
[L. S.] J. E. WHITMAN,
Notary Public.

My commission expires April 14, 1907.

Approved,
JACOB TRIEBER, *Judge.*

Filed February 23, 1906,
W. P. FEILD, *Clerk.*

471 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

I, W. P. Feild, Clerk of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, in the Eighth Circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of the originals remaining of record in my office, and constitute a true copy of the record, assignment of errors and of all proceedings in case of Moore & McFerren *vs.* R. J. McGuire *et al.*

In Witness Whereof, I have hereunto set my hand and the seal of said Court, this fifth day of March in the year of our Lord, One Thousand Nine Hundred and Six and of the Independence of the United States of America, the One Hundred and thirtieth.

[The Seal of the Circuit Court, Western Division, U. S. A.]

Attest:

W. P. FEILD, *Clerk.*

472 In the Supreme Court of the United States.

MOORE & MCFERRIN, Appellants,
v.
R. J. MCGUIRE ET AL., Appellees.

It is agreed by counsel that in printing the record in this cause the following entries and documents may be omitted as shedding no light on the questions to be presented to this court.

Injunction bond	Folio	56,	57	
Oath of Receiver				
Bond of Receiver	"	58,	59,	60
Reports of receiver	"	61,	63,	102
Deposit by receiver	"	63,	64	
Order on receiver as to cutting timber		88,	89	
Entry as to report of receiver	"	101		
Entry as to duty of receiver	"	122		
Response of receiver	"	122		
Entry as to filing response	"	122,	124	
Entry as to report of receiver	"	124,	125	

Given under our hands this 12th day of March, 1906.

U. M. ROSE,
For Appellant.
J. M. MOORE,
For Appellees.

473 [Endorsed:] File No. 20,127. Supreme Court U. S. October Term, 1905. Term No. 625. William Moore and J. S. McFerran, partners, &c., App'ts, *vs.* R. J. McGuire *et al.* Stipulation to omit portions of record in printing. Filed March 26th, 1906.

Endorsed on cover: File No. 20,127. E. Arkansas C. C. U. S. Term No. 222. William Moore and J. S. McFerren, partners doing business under the firm name of Moore & McFerren, appellants, *vs.* R. J. McGuire, E. H. Woods, E. S. Woods *et al.* Filed March 14th, 1906. File No. 20,127.

Supreme Court of the United States, October Term, 1906.

No. 222.

WM. MOORE ET AL., Appellants,
vs.
R. J. MCGUIRE ET AL.

Additional Parts of the Record.

* * * * * * *

Report.

ARKANSAS CITY, *December 15th*, 1899.

To the Hon. John A. Williams, Judge of the U. S. Court, Western Division of the Eastern District of Arkansas:

The undersigned Receiver, heretofore appointed by your Honorable Court, wherein Moore and McFerrin are plaintiffs and R. J. McGuire *et al.*, are defendants, begs leave to submit the following report of his actions in the premises.

I found the 350 logs that were in a raft and anchored to the bank of Island 76, had been in the water so long that they had become water sobbed, and were in a sinking condition, so much so that I was unable to sell or dispose of them. I immediately, as soon as practicable, put a force of men to work bouying them up. The raft broke, and we were only able to save about 150 the other 200 sinking, were lost.

The remainder of the logs, 1990, measuring 507129 feet were sold at public sale bringing $4.10 per M., amounting to Two Thousand and Seventy-nine Dollars and Twenty-one Cents. ($2079.21.).

There having been no claims for labor liens presented to me, as contemplated in your order of October 23rd 1899, I have paid the proceeds of said sale into the Registry of your Honorable Court except a few incidental expenses as herein set forth, and accounted for by proper vouchers, to-wit:

		$2,079.21
Receipt of L. C. Jackson in charge of timber..	$14.00	
Receipt of J. W. Davis, Publisher, for advertising	5.00	
Receipt of J. S. Ross, Skiff hire and traveling expenses	32.45	
Making an expense account of.....	$51.45	51.45
Leaving a balance of.....		$2,027.76

which last named amount was this day paid into the registry of this Honorable Court.

Having fully and finally accounted for, and paid over, all the monies coming into my hands as such Receiver, I ask that this report be accepted, and in all things approved.

Respectfully submitted,

(Signed) J. S. ROSS, *Receiver.*

* * * * * * *

And on November 21st, 1902, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

It appearing to the Court that the report of J. S. Ross, Esq., Receiver herein, filed at a previous day of this term has had no exceptions filed thereto and the Court having examined the same and being now well and sufficiently advised in the premises considers that said report be and the same is hereby approved and confirmed.

It is further ordered by the Court, that said Receiver, J. S. Ross, be and he is hereby allowed the *sum sum* of Five Hundred Dollars for his services rendered herein, and the Clerk will draw his warrant for said amount in favor of said J. S. Ross, out of the fund in this Court in this cause.

* * * * * * *